
**PROPERTY
MANAGEMENT
LEGAL HANDBOOK
FOR
NORTH CAROLINA**

Eighth Edition (Revised 2022)

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INTRODUCTION

As long as the landlord and tenant relationship exists, there will be controversies and disputes. Not all landlords will provide proper attention to maintenance of the premises or to reasonable complaints from tenants. Not all tenants will take reasonable care of the premises or comply with the basic responsibilities the tenant has in this business relationship.

This Legal Handbook will not eliminate landlord-tenant problems. It is designed to be read easily; to help both the landlord and the tenant understand the expectations and reasonable needs of the other; and to be of assistance to property managers in resolving many disputes.

The book does not attempt to cover matters that apply to businesses and employers generally, such as taxation, employment and general business liability. The government regulations for "public housing" are not included. No coverage is given to the rental referral business, which is strongly regulated by Chapter 66, Article 23 of the General Statutes. Emphasis is on residential tenancies, although many legal principles apply equally to commercial leases.

Additional modifications to this book are made as the law is changed by action of the Legislature and by court decision. Paragraphs containing new or modified material are highlighted.

CAUTION: This Handbook is a summary of laws that often appear simple, but in reality can be complex and changing. You should not rely upon the contents of this Handbook when making decisions about situations that could lead to conflict or litigation. For advice about specific problems or plans, seek competent legal advice.

Table of Contents

Part I – The Lease

The Lease	1
A. Form and Contents.....	2
B. Assignment and Sublease	3
C. Termination	3
D. Extensions and Renewals	4
E. "Hold" Fees	5

Part II - The Landlord

The Landlord.....	7
A. Landlord Obligations	8
B. Rules of Conduct.....	12
C. Landlord's Right of Entry	13
D. Suit for Possession and Unpaid Rent	13
E. Permissible Fees for Complaint for Summary Ejectment and/or Money Owed	15
F. Debt Collection Practices	16
G. Disposal of Consumer Information.....	16
H. Foreclosure.....	17
I. Landlord Bankruptcy.....	19
J. Agent Duties Under Vacation Rental Act	21
K. Money Owed to Deceased Tenant or Landlord.....	22

Part III - The Tenant

The Tenant	23
A. Tenant Obligations.....	24
B. Tenant Remedies.....	25
C. Minors	25
D. Security Deposits	26
E. Pet Fees.....	29

Part III - The Tenant (continued)

F. Late Fees	30
G. Payment by Check	30
H. Insolvency or Bankruptcy of Tenant.....	32
I. Surrender and Abandonment	34
J. Early Termination by Victims of Domestic Violence, Sexual Assault or Stalking	35
K. Tenant Rights Under Service Member Relief Act.....	36
L. Early Termination by Tenants Residing in Certain Foreclosed Property.....	38
M. Rights of Tenants to Continue Residing in Foreclosed Property	39

Part IV - The Premises

The Premises	41
A. Repairs and Improvements	41
B. Insurance	42
C. Utilities and Appliances.....	42
D. Parking Areas and Facilities	42
E. Abandoned Vehicles	43
F. Abandoned Personal Property.....	44
G. Disposal of Personal Property of Deceased Tenant.....	46
H. Disposal of "Potentially Confidential Materials" of Attorney Tenant.....	47
I. Damage to Premises	48
J. Security.....	48
K. Vicious Animals	49
L. Disclosure of Lead-Based Paint Information When Leasing Property	50
M. Renovation of Pre-1978 Housing	52

Part V - The Eviction Process

The Eviction Process 56

A. General Principles..... 56

B. Eviction for Criminal Behavior 57

C. Time Schedule..... 59

D. Complaint and Summons 59

E. Service of Process 60

F. Servicemembers Civil Relief Act Affidavit 60

G. The Magistrate's Hearing..... 62

H. Defenses and Counterclaims 62

 1. Retaliatory Eviction 63

 2. Payment 63

 3. Waiver 64

I. Continuances 65

J. Appeal from the Decision 65

K. Execution on the Judgment 66

L. The Sheriff's Assistance 67

Part VI - Discrimination

Discrimination..... 69

A. Fair Housing Acts 69

B. Exemptions..... 69

C. Prohibited Conduct--General..... 70

D. Discrimination in Advertising..... 71

E. Discrimination Based on Familial Status 71

F. Discrimination Based on Handicap 72

 1. "Service Animals" and "Assistance Animals" 74

G. Improper Use of Criminal Background Checks 75

H. Discrimination Against Persons with Limited English Proficiency 77

I. Americans with Disabilities Act 79

J. HUD/State Enforcement 79

Part VII - Government Relations

Government Relations 81

A. The Real Estate Commission - Licensing and Regulation 81

B. Attorney General's Office 82

C. Local Government 82

D. State Treasurer's Office 84

Disclosure Form - Lead-Based Paint APPENDIX A

Selected North Carolina General Statutes..... APPENDIX B

Part I: The Lease

A lease is simply a contract in which one party, the landlord, allows another party, the tenant, to use or occupy for a specific time certain premises in exchange for something of value, like the tenant's promise to make periodic rental payments. By written agreement, the rights and responsibilities of the tenant and the landlord can be described in great detail. Both landlord and tenant then are bound by contract. Usually, the landlord cannot raise the stated rent during the term, and the tenant must pay until the end of the term. But, the agreement can provide for rent escalations during the term, and allow early termination by the tenant without further obligation under certain conditions. In some situations, regardless of the words of the contract, laws from Congress (such as the Servicemembers' Civil Relief Act) or the state legislature (such as the retaliatory eviction law) will control the rights and responsibilities of landlord and tenant.

It is not necessary for a lease to be written unless it is a vacation rental; most leases are written because this helps make clear the rights and obligations of the parties. A verbal lease can be an enforceable contract; however, state law says any lease for more than three years must be written or it will be unenforceable. (It is not illegal, but the courts will not help either party enforce it.)¹

A lease for a term of less than ninety days requires consideration of laws regulating hotels and similar facilities for short-term lodging. In some cases, only an expert analysis of the facts will determine whether a relationship is that of landlord and tenant or "hotel, motel or similar lodging."²

The Vacation Rental Act covers people who rent for "vacation, leisure, or recreation purposes." The Act gives owners and managers of such property similar responsibilities as other landlords and managers. All vacation rental agreements must be written, and the Act includes many strict requirements for their contents.³

REFERENCES

1. [N.C.G.S. 22-2](#)
2. [Baker v. Rushing](#), 104 N.C. App. 240, 409 S.E.2d 108 (1991)
3. [N.C.G.S. 42A-1 through -36](#)

A. Form and Contents

A satisfactory written lease must contain certain provisions. It identifies all parties who will have a responsibility for the contract. If a landlord wishes to hold liable two or more persons as tenants, each should sign or there should be some written document on file proving that one has the authority to sign for the other. When there are two or more responsible tenants, each is entitled to an eviction notice if that becomes necessary. The lease includes also: a sufficient description of the particular property involved; a starting date and duration (the "term"); the amount of rent and payment dates; important obligations of the tenant; and important obligations of the landlord. Some of the rights and obligations that should be clearly stated to avoid arguments and litigation include: rent due date and the landlord's rights when unpaid; parking; permitted uses of the premises; pets; sub-leasing; utilities; damages; repairs; and improvements made by the tenant. If a security deposit is obtained, the landlord must notify the tenant where it is being held (in writing, either at the time it is obtained or within thirty days after the lease term begins).¹

The lease terminology can shorten the length of time for an eviction. Unless appropriate wording is used, a landlord cannot begin the eviction process until ten days have passed after the landlord makes "a demand for the rent."²

Each person with obligations or rights should sign the contract. Use of the printed word "seal" after a signature can extend from three years to ten years the time within which a lawsuit may be brought against the person signing this contract.

While some statutes create procedural rules that can be governed by a lease contract, certain statutory provisions are "included" in all leases because the North Carolina General Statutes mandate certain responsibilities and actions. These General Statutes requirements are always in force, and override any conflicting provisions within the lease.

The purpose of any lease is to establish the obligations which the landlord and tenant will be bound by for the duration of the lease. Although circumstances may arise which are not covered in the lease, careful drafting will provide solutions for most problems. Clarity and attention to details are essential in the drafting of a lease, for ambiguities will lead to the need for interpretation, and may result in a court challenge by the tenant. Any ambiguity in a contract is interpreted in favor of the person who did not prepare the ambiguous words, so the landlord always is at a disadvantage in court if the lease is not clear.

The length of the lease, the number and types of provisions, and the detail involved in provisions will vary. Rules and regulations the tenant must obey to protect the property and to

preserve harmony should be included in the agreement or attached to it, and the lease should state that the tenant will comply with all the rules and the regulations.

Use of "fine print" should be avoided. And, when describing items most likely to be misunderstood or objected to by tenants, the use of attention-getting type, such as large bold lettering, is advisable.

REFERENCES

1. [N.C.G.S. 42-50](#)
2. [N.C.G.S. 42-3](#)

B. Assignment and Sublease

When a tenant's entire interest in leased property is transferred to another person, it is an "assignment" of the lease. In an assignment, the original tenant does not retain any later interest in the lease term. However, when the tenant assigns his interest in the lease, he has not relieved himself of future responsibility under the lease. Thus, if the person to whom the lease is assigned does not pay the rent, the landlord can still recover the rent from the original tenant.

In a "sublease," the tenant makes an arrangement directly with a third party for the third party to use the property for a portion, but not all, of the remainder of the original lease term; The landlord-tenant relationship continues between the two original parties of the lease agreement. As is the case in an assignment, the original tenant who subleases the property has not relieved himself from future liability under the lease.

Unless there is a restriction in the lease stating otherwise, the interest of the tenant can be assigned or subleased without the landlord's consent. Consequently, leases often contain a provision that the tenant shall not assign or sublet the premises without the approval of the landlord. This allows the landlord to obtain the same information from all prospective tenants, and apply the same standards to each one. A provision in the lease that the tenant cannot sublease may be significant when rental charges are less than current market charges, and the tenant desires to sublease at a profit.

C. Termination

The lease term agreed upon usually is part of a written agreement. An early termination of the relationship can be agreed upon at any time. However, if because of current market conditions re-leasing is expected to be delayed or difficult, the landlord may not agree

to change the contract or make a substitute contract and relieve the tenant of responsibility for paying through the end of the term.

In the absence of a written agreement which specifies other notice requirements, North Carolina law provides that a tenancy may be terminated upon the giving of certain notice prior to the end of the current term of the tenancy. A tenancy from year-to-year may be terminated by giving a notice of one month or more; a tenancy from month-to-month by a notice of seven days or more; and a tenancy from week-to-week by a notice of two days or more. A notice of sixty days is required with the rental of space for a manufactured home.¹

In general, the grounds for a court proceeding to effect a termination are: failure to pay rent when due; expiration of the term; and breach of contract (violation of a material lease provision or a rule of conduct incorporated by reference into the lease).

Termination by landlords for tenants engaged in drug-related and other criminal activities can be accomplished through a special law, the details of which are contained in the Part V of this Handbook. Special laws permitting early terminations by tenants who are victims of domestic violence, military personnel and tenants residing in property subject to foreclosure proceedings are covered in Part III of this Handbook.

REFERENCES

1. [N.C.G.S. 42-14](#)

D. Extensions and Renewals

There is no specified termination date for a lease in North Carolina law. Agreement of the parties, or actions that show evidence of an agreement to have a lease from month-to-month or year-to-year, will establish the termination date. A renewal clause can extend a lease indefinitely. However, if there is no provision in the lease giving the tenant the option to renew, there is no implied right to renew.¹

The law requires that an automatic renewal provision in a contract to sell or lease a product or service to a consumer must be disclosed clearly and conspicuously in the contract.² Additionally, any such contract must disclose clearly and conspicuously how to cancel the contract. A violation of this law makes the automatic renewal clause void and unenforceable.³ The law specifically does not apply to real estate brokers, and it can be argued that a residential real estate lease is not a contract for a “product or service” in any event. However, an argument can also be made that the law does apply to a landlord represented by a property manager, so it is advisable to capitalize or in some other manner “clearly and conspicuously”

disclose any automatic renewal clause and the manner in which the lease may be terminated in order to avoid any automatic renewal.

A written lease should state what happens if the tenant remains on the premises after the agreed time period ends. This is referred to as "holding over" and the lease should provide for a continuation of the basic contract, with modifications for the extended term (possibly month-to-month until a new contract is signed), and there may be a rent increase provision. In the absence of a written agreement, courts have ruled that a tenant holding over under a year-to-year lease may have the right to continue in possession on a year-to-year basis.⁴ If a lease has any ambiguity relating to renewals, the ambiguous words will be interpreted in favor of the party who did not draft these words. This is a general rule of contract law, and encourages careful attention to the wording of the lease.

REFERENCES

1. **Lewis v. Lewis Nursery, Inc., 80 N.C. App. 246, 342 S.E.2d 45 (1986)**

2. [N.C.G.S. 75-41](#)

3. [N.C.G.S. 75-41\(e\)](#)

4. **Murrill v. Palmer, 164 N.C. 50, 80 S.E. 55 (1913)**

E. "Hold" Fees

Provided it is done correctly, a landlord may collect a fee from a prospective tenant to hold the property for a specified period of time. The agreement between the landlord and the prospect about the fee should be in writing and signed by both. A lawyer should draft or at least review the fee agreement for clarity. The fee should not be referred to as a "security deposit." It should be called a "hold fee," "binder fee," "reservation fee" or something similar. Security deposits are controlled by the Tenant Security Deposit Act (G.S. 42-50 through 42-56). The Act permits the use of security deposits only for items specifically listed in Section 42-51 of the Act. Holding a rental property off the market is not on the list.

It should clearly be stated that the fee is being given to hold the property for the prospect for a specified period of time. The amount of the fee should be reasonable, taking into account such things as the period of time that the property is off the market, the desirability of the property and the rental rate. It should be clear that the fee will be kept by the landlord if the prospect does not enter into a lease agreement or comply with its terms (for example, paying any rent or security deposit that may be due and owing at the time the

lease commences). Avoid using the phrase “non-refundable” since the fee is not truly “non-refundable” under all circumstances. For example, if something happens to the property during the “hold” period that makes it uninhabitable for a lengthy period of time, the fee clearly would be refundable in such a situation.

It should also be clear what happens to the fee if the prospect does lease the property. There is nothing that requires the fee to be applied toward the tenant’s lease obligations, and it could simply be kept by the landlord in consideration for giving the prospect an agreed-upon period of time to decide whether he or she is going to rent the property. Typically, though, it is understood that the fee will be applied toward the first month’s rent or the security deposit. It shouldn’t matter whether the fee is applied to the first month’s rent or the security deposit. However, out of an abundance of caution, it may be preferable to apply the fee toward the tenant’s rent obligation rather than the security deposit, as this may help minimize the potential for an argument that since the fee was “converted” into a security deposit it should be characterized as a security deposit and thus subject to the Tenant Security Deposit Act.

Finally, if a property manager collects a fee for holding the property off the market, it should be clear between the manager and the landlord client who is entitled to keep it. This understanding should be in writing and preferably addressed in the management agreement.

Part II: The Landlord

The term "landlord" generally applies both to the person or company that owns a rental unit and to the person or company which manages the property. Under North Carolina's Residential Rental Agreements Act, the term "landlord" is defined as "...any owner and any rental management company, rental agency, or any other person having the actual or apparent authority of an agent to perform the duties imposed by this Article."¹ Management of the property often includes advertising, contracting with prospective tenants, maintenance, collecting, and eviction. Property managers may be agents for one property owner or several unrelated property owners.

The law of agency makes a "principal" liable for the acts and promises of an "agent." As a general rule, leasing agents and repair personnel are agents of, and can create liability for, the landlord. If the agent is found to have committed a civil wrong (a "tort") the agent is personally liable also.²

A State statute provides that a real estate broker or firm managing a rental property is not personally liable as a party in a civil action between the landlord and tenant solely because the landlord is not identified in the rental agreement.³ This is potentially significant because under the common law of agency, if an agent doesn't disclose to a party with whom the agent is dealing the identity of principal on whose behalf he or she is acting, the agent can become personally responsible for fulfilling the principal's obligations to the other party. However, as noted in Part II, Section A, under the Residential Rental Agreements Act (the "RRAA") the definition of "landlord" includes any rental management company or other agent, and the North Carolina Court of Appeals has held that a property manager may be liable to a tenant if property under management is not kept in fit and habitable condition. Thus, the potential impact of this new law is likely less significant under the RRAA than under the Vacation Rental Act (the "VRA"). Under the VRA, the definition of "landlord" does not include a rental management company or other agent.³

Because the property manager is the "agent" of the property owner, the property owner can be held liable for actions of the property manager when those actions are in the "course and scope" of the purpose for which the agent was employed. A general principle of agency law is that when an agent causes harm to someone through negligence, both the employer and the agent are equally liable.

Even one rental of residential property makes a person subject to the laws relating to landlords, including potential treble damages and tenant attorney fees if the tenant's claim is for "unfair or deceptive trade practices." ⁴

REFERENCES

1. [N.C.G.S. 42-40\(3\)](#)
2. [Baker v. Rushing](#), 104 N.C. App. 240, 409 S.E.2d 108 (1991)
3. N.C.G.S. [42-44\(c1\)](#) and [42A-33\(b\)](#)
4. [Stolfo v. Kernodle](#), 118 N.C. App. 580,455 S.E.2d 869 (1995)

A. Landlord Obligations

Under the Residential Rental Agreements Act, the landlord is obligated to: (1) comply with current applicable building and housing codes; (2) make all repairs necessary to put and keep the premises in a fit and habitable condition; (3) keep all common areas in safe condition; (4) maintain and repair all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities supplied by the landlord; (5) provide operable smoke alarms, either battery operated or electrical, having an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and install the smoke alarms in accordance with either the standards of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the landlord shall retain or provide as proof of compliance; (5a) When installing a new smoke alarm or replacing an existing smoke alarm, install a tamper-resistant, 10-year lithium battery smoke alarm, unless (i) the dwelling unit is equipped with a hardwired smoke alarm with a battery backup or (ii) the dwelling unit is equipped with a smoke alarm combined with a carbon monoxide alarm that meets the requirements provided in (7) below; (6) provide notice that water being supplied exceeds a maximum contaminant level if the landlord is charging for the cost of providing water or sewer service and has actual knowledge that water being supplied to tenants within the landlord's property exceeds a maximum contaminant level; (7) with respect to dwellings having a fossil-fuel burning heater, appliance, or fireplace, or in any dwelling unit having an attached garage, provide a minimum of one operable carbon monoxide alarm per rental unit per level, either battery operated or electrical, that is listed by a national, OSHA-approved testing laboratory, and install the carbon monoxide alarms in accordance with either the standards of the National Fire Protection Association or the

minimum protection designated in the manufacturer's instructions, which the landlord shall retain or provide as proof of compliance; and (8) repair or remedy any imminently dangerous condition on the premises within a reasonable period of time based upon the severity of the condition after acquiring actual knowledge or receiving notice of the condition.¹

The term “imminently dangerous condition” means any of the following:

1. Unsafe wiring.
2. Unsafe flooring or steps.
3. Unsafe ceilings or roofs.
4. Unsafe chimneys or flues.
5. Lack of potable water.
6. Lack of operable locks on all doors leading to the outside.
7. Broken windows or lack of operable locks on all windows on the ground level.
8. Lack of operable heating facilities capable of heating living areas to 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from November 1 through March 31.
9. Lack of an operable toilet.
10. Lack of an operable bathtub or shower.
11. Rat infestation as a result of defects in the structure that make the premises not impervious to rodents.
12. Excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation or mold.

The landlord may recover from the tenant the actual and reasonable costs of repairs that are the fault of the tenant.

It is the duty of the landlord to ensure that smoke and carbon monoxide alarms are operable and in good repair at the beginning of each tenancy. Unless there is a written agreement to the contrary, the landlord must install new batteries in a battery-operated device at the beginning of each tenancy and the tenant must replace the batteries as needed except where the smoke alarm is a tamper-resistant, 10-year lithium battery smoke alarm. The landlord must repair or replace a smoke or carbon monoxide detector within fifteen days of receiving notice in writing from the tenant of the need to do so; however, the tenant is liable for reimbursement costs if the smoke or carbon monoxide detector is disabled or damage has been caused other than through actions of the landlord, the landlord's agents, or acts of God. The statutes do allow for temporarily disabling a smoke or carbon monoxide detector during construction or rehabilitation of the premises. And, there is a potential fine for the landlord

who fails to comply with this law or a tenant who fails to reimburse a landlord when required to do so for repairs or replacement.²

For vacation rental property, battery-operated smoke and carbon monoxide alarms must have new batteries once a year.³ The landlord must ensure that a carbon monoxide alarm is operable and in good repair, and must replace or repair a carbon monoxide alarm within three days of receipt of written notice by a tenant.

While there may be justification for the landlord failing to comply with these duties, such as some natural disaster, if the landlord does breach a statutory duty this can be the basis for a suit brought by a tenant, or a counterclaim by the tenant in a suit brought by the landlord.

Even compliance with statutory duties may not protect a landlord against litigation. The North Carolina Supreme Court has ruled that a landlord could be found negligent by a jury for failing to build a reasonably fire-resistant building when it was agreed that building code standards were met in construction. The court said the injured tenant should be allowed to present evidence to the jury that the landlord had knowledge of the potential safety hazard and failed to act as a reasonable person would have acted under the circumstances.⁴ (When this case was remanded for trial, the jury found that the landlord was not liable for the tenant's damages. N.C. Lawyers Weekly, Vol. 3, No. 24, Page 1)

An unidentified case reported in the February 8, 1999, issue of North Carolina Lawyers Weekly (Supp. Page 9) illustrates the extent to which liability can occur for property managers and owners. The plaintiff was shot at an apartment complex by a man who was a crack cocaine dealer associated with a tenant known by management to be a dealer. Evidence was that there had been 275 criminal acts at the complex in the past three years. The on-site manager requested permission to obtain criminal background checks on prospective tenants, but permission was not granted until a year after this crime. The plaintiff, age 16, was paralyzed by this injury. The case was settled before trial for \$1,200,000.00.

In North Carolina, the general rule is that a landlord has a duty to exercise reasonable care to protect his tenants from third-party criminal acts that occur on the leased premises, if such acts are foreseeable. The case involved a tenant in a mobile home park who, while heavily intoxicated, began an altercation with another tenant that eventually resulted in the other tenant being doused with gasoline and set on fire. Although the Court found that the defendant property manager did have a duty to exercise reasonable care to prevent the assault, the court concluded that any reasonable safety measures taken by the landlord would not have prevented the attack and upheld the dismissal of the suit against the property manager. Thus, a property manager can be held legally responsible for injuries caused by

the criminal act of one of his tenants. The key inquiries are whether that criminal act was foreseeable, and whether there are reasonable safety measures that the manager could have taken that would have prevented the injury.⁵

A recently-enacted state statute provides that the criminal record of any current or prospective residential tenant, occupant, or guest shall not make any future injury or damage arising from any such person foreseeable by the landlord or landlord's agent. The statute further provides that a landlord or landlord's agent does not have a duty to screen, or refuse to rent because of, the criminal record of a prospective or current residential tenant, occupant, or guest; however, the statute does not prohibit a landlord or landlord's agent from using a criminal background check as grounds for refusing to rent to any prospective or current residential tenant.⁶

Defective conditions, such as broken stairs, unsafe flooring, and similar dangers, create liability for the landlord and the tenant. A failure to warn some third party of known dangerous conditions can cause either or both of them to have responsibility for injuries suffered. State law requires that notification of necessary repairs must be made to the landlord in writing by the tenant - with the exception of emergencies.⁷ If the landlord has notice of a dangerous condition and fails to make reasonable repairs within a reasonable time, the landlord is "at risk."

A landlord has no duty to disclose that a death has occurred on the property, or that someone with a serious illness, such as AIDS, has occupied the property, or that a convicted person required to register as a sex offender "occupies, occupied, or resides near" the property. However, a landlord cannot knowingly make a false statement regarding such facts.⁸

A landlord may not take or interfere with a tenant's personal belongings.⁹ If this does occur, the tenant can either bring a civil action against the landlord to get the property back or to obtain compensation for the property's value. Of course, personal property of a tenant left in a "common area" shared by other tenants will be subject to rules of the premises. The 1995 General Assembly removed a provision in the residential tenancy law that gave the landlord a lien against the tenant's property (formerly in N.C.G.S. 44A-2).

A criminal statute prohibits sexual harassment of tenants. The offense is described as "unsolicited overt requests or demands for sexual acts when (i) submission to such conduct is made a term of the execution or continuation of the lease agreement, or (ii) submission to or rejection of such conduct by an individual is used to determine whether rights under the lease are accorded."¹⁰ A landlord, or landlord's agent, who violates this law should be reported to the local District Attorney for prosecution.

The North Carolina Court of Appeals has held that since the term “landlord” is defined in the Residential Rental Agreements Act as “any owner and any rental management company, rental agency, or any other person having the actual or apparent authority of an agent to perform the duties imposed by this [Act],”¹¹ a property manager may be liable to a tenant for damages if property under management is not kept in a fit and habitable condition.¹² However, the term “landlord” as defined in the Vacation Rental Act does not include an agent or rental management company.¹³

REFERENCES

1. [N.C.G.S. 42-42](#)
2. [N.C.G.S. 42-44](#)
3. [N.C.G.S. 42A-31\(5\) and \(6\)](#)
4. [Collingwood v. General Electric Real Estate Equities](#), 324 N.C. 63 376 S.E.2d 425 (1989)
5. [Davenport v. D.M. Rental Properties, Inc.](#), 718 S.E.2d 188 (N.C. Ct. App. 2011)
6. [N.C.G.S. 42-14.5](#)
7. [N.C.G.S. 42-42\(4\)](#)
8. [N.C.G.S. 42-14.2](#)
9. [N.C.G.S. 42-25.7](#)
10. [N.C.G.S. 14-395.1](#)
11. [N.C.G.S. 42-40\(3\)](#)
12. [Surratt v. Newton](#), 99 N.C. App. 396, 393 S.E. 2d 554 (1990)
13. [N.C.G.S. 42A-4\(2\)](#)

B. Rules of Conduct

A landlord has the right to impose rules upon tenants. These rules can govern conduct that may be objectionable to neighbors and destructive to property. Reference should be made to the rules in the lease agreement, with provision for enforcement by the landlord that includes eviction for serious or repeated violations of the rules after warnings to the tenant.

If there is an attempt to evict a tenant for a violation of these rules, the landlord must be certain that the rules were not only clearly communicated, but that they were enforced against all tenants in a non-discriminatory manner.

Rules can be changed as needed, and in response to problems. However, unless the lease specifies that rules can be changed, a tenant may insist that the lease contract applies only to the rules in effect at the time the lease began.

C. Landlord's Right of Entry

The tenant receives rights of privacy and the "quiet enjoyment" of the premises. Unless the lease says otherwise, the landlord has no more right than any other person to enter the leased premises during the term of the lease.

If the landlord notices an unlawful act occurring, or sees fire, smoke or other evidence of an emergency condition, the landlord can take only such action as any private citizen can take. That may be notification of law enforcement officers or an emergency service - or, in some cases, entry of the premises to perform a rescue.

While the landlord has a duty to repair, the tenant has a corresponding duty to notify the landlord of any repairs needed. The tenant and landlord must make an effort to establish reasonable times for the landlord to enter the premises and make the repairs. If the landlord desires a right of entry for inspection, to make repairs, or for other purposes, a provision must be inserted in the lease.

D. Suit for Possession and Unpaid Rent

In comparison to most other court proceedings, a lawsuit for possession of the landlord's property (premises) is a relatively fast and simple procedure.

The summary ejection law allows a landlord to sue for both possession and money in the same lawsuit.¹ The law permits an officer to post the summons and complaint to a conspicuous part of the premises if other methods of service have failed.² However, a suit to collect money from a tenant is an action against the tenant's property, and the law requires that the notice of the legal action must comply with service of process rules of all similar lawsuits. That means the notice must be served in a way that is personal. Thus, when a judgment for money is sought along with possession in a summary ejection action, the landlord must be sure the defendant receives personal service of the complaint and notice to appear in court.³ If personal service is not obtained, the magistrate may only award possession of the property to the landlord. At the request of the landlord or agent, the magistrate may sever the claim for monetary damages and proceed with the claim for summary ejection, in which case the judgment of the magistrate in the claim for summary ejection will not prejudice the claims or defenses of any party in the claim for monetary damages. This would permit the landlord or

agent to proceed with the claim for monetary damages at a later date without having to file a new action.⁴

A landlord is permitted to bring a separate action to recover rent under the lease after he has obtained possession of the property.⁵ However, if the landlord seeks to recover any past-due rent in connection with the summary ejectment complaint, he may be barred from seeking additional rent or other damages in a separate action filed later⁶ In addition, since North Carolina law holds that a landlord cannot recover damages which he could have averted by reasonable mitigation activity, a landlord seeking to recover rent due under a lease should be prepared to demonstrate that he used reasonable efforts to mitigate or lessen the tenant's damages by attempting to find a new tenant.

REFERENCES

1. N.C.G.S. [42-26](#) and [42-28](#)
2. [N.C.G.S. 42-29](#)
3. See opinion of Attorney General to Hon. Thomas N. Hix, Chief District Court Judge, 29th Judicial Circuit, 60 N.C.A.G. 95 (1992)
4. [N.C.G.S. 7A-223\(b1\)](#)
5. [N.C.G.S. 42-28](#)
6. Chrisalis Properties, Inc. v. Separate Quarters, Inc., 101 N.C. App. 81, 398 S.E.2d 628 (1990)

E. Permissible Fees for Complaint For Summary Ejectment and/or Money Owed

A landlord may charge certain administrative fees related to a landlord's complaint for summary ejectment and/or money owed. The charges are:

- **Complaint-Filing Fee.** A fee of up to \$15.00 or five percent (5%) of the rental payment, whichever is greater, may be charged if: (i) a tenant is in default of the lease, (ii) the landlord files and serves a complaint for summary ejectment and/or money owed, (iii) the tenant cures the default or claim, and (iv) the landlord dismissed the complaint prior to judgment.
- **Court Appearance Fee.** A fee of up to ten percent (10%) of the rental payment may be charged if: (i) a tenant is in default of the lease, the landlord files, serves, and successfully prosecutes a complaint for summary ejectment and/or money owed in small claims court, and (iv) neither party appeals the judgment of the magistrate.
- **Second Trial Fee.** A fee of up to twelve percent (12%) of the rental payment may be charged for a new trial following an appeal from the judgment of a magistrate, provided the landlord proves: (i) that the tenant is in default of the lease and (ii) the landlord prevails.

It is important to note the following:

- Only ONE of these administrative fees may be charged for an eviction
- The fee must be specifically provided for in the rental contract.
- The fee earned may not be deducted from the tenant's subsequent rent payment and failure to pay the fee may not be declared as a default of the lease for a subsequent summary ejectment action.
- If the rent is subsidized by HUD, the US Department of Agriculture, a State Agency, a public housing authority, or a local government, the fee shall be calculated on the tenant's share of the rent only
- If the tenant appeals the judgment of the magistrate, and the magistrate's judgment is vacated, any Court Appearance Fee awarded by a magistrate to the landlord is also vacated.

In addition, a landlord is also permitted to charge and recover filing fees, costs for service of process, and reasonable attorneys' fees actually incurred, if provided for in the lease, not to exceed fifteen percent of the amount owed by the tenant, or fifteen percent of the monthly rent stated in the lease if the eviction is based on a default other than the

nonpayment of rent. These out-of-pocket expenses may be included by the landlord in the amount required to cure a default.

Any fees other than those listed above are void and against public policy, and any attempt to collect such a fee could potentially subject a landlord or property manager to a claim for unfair and deceptive trade practices and a reasonable attorney's fee.¹

REFERENCES

1. [NCGS 42-46\(e\) through \(j\)](#)

F. Debt Collection Practices

Laws regulating the collection of debts exist at both the federal and state level. The federal law is known as the Fair Debt Collection Practices Act ("FDCPA"), and its state counterpart is known as the North Carolina Debt Collection Act ("NCDCA"). Although property managers are not covered by the FDCPA, they are covered under the NCDCA and thus need to comply with it.¹

The NCDCA sets out prohibited acts by debt collectors. The North Carolina Court of Appeals has ruled that a landlord's attempt to collect a late fee for past due rent that exceeded the permissible amount (\$15.00 or five percent of the rental payment) was a violation of the debt collection provisions of the UDTPA.² Prohibited acts by debt collectors include the use of threats and coercion, harassment, unreasonable publication of information relating to a consumer's debt, deceptive representations, and other "unconscionable" means to collect any debt. Attorney's fees and civil penalties of up to \$2,000.00 may be awarded by a judge for violations of the UDTPA's debt collection provisions.

REFERENCES

1. [N.C.G.S. 75-50 through 56](#)
2. [Friday v. United Dominion Realty Trust, Inc.](#), 155 N.C. App. 671, 575 S.E.2d 532 (2003).

G. Disposal of Consumer Information

Under the federal Fair and Accurate Credit Transactions Act of 2003 ("FACTA") and North Carolina's Identity Theft Protection Act ("ITPA"), for-profit businesses are now required to take reasonable measures to dispose of certain personal information about consumers. "Personal information" is broadly defined under ITPA to include a person's

name in combination with identifying information such as social security numbers, drivers' license numbers, bank account and credit card numbers, e-mail addresses, PIN codes, and any other numbers of information that can be used to access a person's financial resources. Under FACTA, "consumer information" means "any record about an individual... that is a consumer report or is derived from a consumer report." Businesses that maintain such information must implement and monitor compliance with written policies and procedures that require the "burning, pulverizing, or shredding of papers containing personal information, and the destruction or erasure of electronic media and other non-paper media, containing personal information, so that information cannot practicably be read or reconstructed."

Under ITPA, any business that maintains or possesses records or data containing personal information of residents of North Carolina shall notify the owner or licensee of the information of any security breach immediately following discovery of the breach. The notice must include certain information and may be provided by one of several specified methods. In the event a business provides notice to an affected person, the business also shall notify without unreasonable delay the Consumer Protection Division of the Attorney General's Office of the nature of the breach, the number of consumers affected by the breach, steps taken to investigate the breach, steps taken to prevent a similar breach in the future, and information regarding the timing, distribution, and content of the notice.²

Under ITPA, a violation of the duty to destroy a consumer's personal information or provide notice of a security breach is an unfair and deceptive trade practice. Any damages sustained by the consumer as a result of the violation of the duty to destroy a consumer's personal information are not trebled unless the business was negligent in the training, supervision, or monitoring of its employees.

REFERENCES

1. [N.C.G.S. 75-64](#)
2. [N.C.G.S. 75-65](#)

H. Foreclosure

A foreclosure puts a property manager in a difficult position of balancing the interests of the landlord client, the tenant, and the foreclosing party.

A foreclosure proceeding is officially started by the filing of a Notice of Hearing with the Clerk of Court's office. The purpose of the Notice is to notify the owner of the property and other persons entitled to notice of the time and place of the hearing at which the clerk will determine whether the foreclosing party should be allowed to sell the property. The law does not require service of a copy of the Notice of Hearing on occupants of the property.¹

If the clerk of court enters an order allowing the property to be sold, there will be a public sale of the property. Notice of Sale must be posted in the courthouse, published in an appropriate newspaper, and served on the owner and others entitled to notice of the sale, which includes known occupants under a residential rental agreement if the property contains fewer than 15 dwelling units.²

At the date, time and place provided in the Notice of Sale, the property is offered for auction. The trustee handling the foreclosure typically opens the bidding at an amount provided by the lender. Frequently there are no other bids. At the end of the bidding the auction closes.

For 10 days after the sale, anyone, including the owner, can enter an upset bid with the clerk of court. Each time an upset bid is entered, the 10-day upset bid period starts over. At any time prior to the end of the upset bid period, the owner has the right to end the foreclosure proceeding by paying off the mortgage debt and the expenses of the foreclosure proceeding. Once the upset bid period ends, the rights of the parties become fixed and the owner can no longer stop the foreclosure process.³

When the bid amount is received from the high bidder, the trustee delivers a trustee's deed to the bidder for recording at the Register of Deeds office. An order for possession in favor of the purchaser and against any person in possession may then be issued by the Clerk of Court if 10 days' notice has been given to the person in possession, or, in the case of residential property containing 15 or more dwelling units, 30 days' notice has been given.⁴

As described in Part III of this Handbook, the tenant has specific rights to terminate the lease or to remain in the property. A foreclosure can cause a tenant to experience high emotions. A property manager should remind the tenant that the manager represents the owner, not the tenant, and that the manager cannot give them legal advice about what to do. The manager should give the tenant copies of N.C.G.S. 42-45.2, which sets forth the tenant's rights to terminate the lease, and the Federal Protecting Tenants at Foreclosure Act, which sets forth the tenant's rights to remain in the property for a period of time. In either event, the tenant remains obligated to pay rent as required by the lease until the lease ends.

The legality of the property management agreement is not affected by the commencement of a foreclosure proceeding. Thus, the property manager remains obligated to perform all duties as required by the property management agreement until the agreement ends, including the collection and disbursement of rents. Once the trustee's deed is delivered by the trustee to the high bidder, the owner's interest in the property ends and so do the property manager's rights and duties under the management agreement. The manager should stop collecting rent once the previous owner's interest in the property has ended unless the new owner engages the manager to manage the property. If the tenant has chosen to remain in the property, the manager should advise the tenant that future rent payments will be between them and the new owner.

Once the owner's interest in the property has been terminated, the security deposit may be transferred to the new owner or refunded to the tenant.⁵ If transferred to the new owner, the property manager should advise the new owner of the requirement that the security deposit be deposited in a trust account or a bond purchased from an insurance company licensed to do business in North Carolina.

REFERENCES

1. [N.C.G.S. 45-21.16](#)
2. [N.C.G.S. 45-21.17](#)
3. [N.C.G.S. 45-21.27](#)
4. [N.C.G.S. 45-21.29](#)
5. [N.C.G.S. 42-54](#)

I. Landlord Bankruptcy

A bankruptcy filing by a landlord has the potential to substantially affect both the landlord-tenant relationship and the relationship with a broker managing the property. In both cases, the effects are possible because the Bankruptcy Code gives debtors broad authority to either accept (i.e. affirm) or reject executory contracts and unexpired leases. This reflects the underlying bankruptcy policy that debtors should be able to abandon burdensome contracts and retain those contracts that are beneficial. An executory contract is a contract which has not yet been fully performed. In other words, it is a contract where both parties still have material obligations that are ongoing. A property management agreement falls squarely within this definition because both the property owner and the manager have

obligations (to each other and to the tenant) that are ongoing, and therefore would not have been fully performed at the time of any bankruptcy filing.

Although Bankruptcy Court approval is required in order for a debtor to reject any unexpired leases, the reality is that courts give debtors wide latitude in making that decision. The decision to reject an unexpired lease is considered to be a matter within the business judgment of the debtor and generally, courts will approve that decision unless they find that the debtor acted in bad faith or there was gross abuse of the debtor's business discretion.

While the landlord's duties under a rejected lease are discharged (for example, the duty to make whatever repairs are necessary to keep the premises in a fit and habitable condition), Section 365(h) of the Bankruptcy Code protects the rights of residential tenants if their unexpired lease has been rejected. A tenant can choose to treat the rejected lease as terminated and can abandon the premises, or may remain in possession of the leased premises for the balance of the lease term. If the tenant stays, they will owe rent at the same rate and will retain all of the rights set forth in their lease except those rights associated with the landlord's performance. Because the landlord is relieved from its obligation to make repairs under a rejected lease, the Bankruptcy Code allows the tenant to offset against their rent payments all damages resulting from the landlord's non-performance after the date of the lease rejection.

A tenant likely does not have the right to abandon the premises just because the landlord has filed a bankruptcy petition. Unless the lease agreement provides otherwise, the mere filing of a bankruptcy petition by a landlord is not a breach of the lease agreement. If the landlord-debtor does not reject the unexpired lease, both parties must continue to satisfy their obligations under the lease as if no bankruptcy has occurred. Absent a rejection by the landlord, the tenant should not demand to be released from his or her lease obligations. That act could be considered a violation of the automatic stay that would subject the tenant to sanction by the Bankruptcy Court.

A property manager may terminate the management agreement if it provides that a bankruptcy filing by the landlord constitutes a breach of the agreement. Absent such a provision, a manager remains obligated to perform its obligations under that agreement pending the debtor's decision to assume or reject that contract. In a Chapter 7 bankruptcy case, executory contracts are deemed rejected 60 days after the case is filed, unless the court grants the debtor additional time. That means that a Chapter 7 debtor must act to assume any executory contracts within the 60-day period. Under all of the other bankruptcy Chapters,

executory contracts can be assumed or rejected by the debtor up to and including the time that the debtor's repayment or reorganization "plan" is confirmed.

If a property manager receives notice that the landlord client has declared bankruptcy, the manager should review the management agreement to determine if it addresses the issue of bankruptcy. If it does not, the manager should continue to perform all of your obligations set forth in the agreement. The manager should contact the owner to determine whether they intend to affirm or reject the management agreement. If the agreement is rejected, the manager should treat the agreement as terminated and perform the duties on termination as set forth in the agreement. Before sending any payments to the property owner, the manager should contact the landlord's bankruptcy attorney for direction, and then get those directions confirmed in writing. If a manager has questions about how to handle any aspect of his or her duties on termination, he or she should consult with an experienced bankruptcy attorney.

J. Agent Duties Under Vacation Rental Act

The Vacation Rental Act sets forth specific duties of a real estate broker managing a vacation rental property.¹ Those duties are:

- To manage the property according to the vacation property management agreement with the owner.
- To offer the property in accordance with applicable state and federal laws, including the fair housing laws.
- To notify the landlord of any repairs necessary to keep the property in fit and habitable condition and to follow the landlord's direction in arranging for any such repairs, including repairs to all electrical, plumbing, sanitary, heating, ventilating, and other facilities and major appliances supplied by the landlord upon written notice from the tenant that repairs are needed.
- To verify that the landlord has installed smoke detectors and carbon monoxide alarms.
- To verify that the landlord has annually placed new batteries in a battery-operated smoke detector or carbon monoxide alarm.

1. [N.C.G.S. 42-A-33\(a\)](#)

K. Money Owed to Deceased Tenant or Landlord.

A North Carolina statute permits any person indebted to a decedent to satisfy such indebtedness by paying the amount of the debt to the clerk of the superior court of the county of the domicile of the decedent if (i) no administrator has been appointed, and (ii) the amount owed by such person does not exceed five thousand dollars (\$5,000). The receipt from the clerk of superior court of a payment made pursuant to the statute is a full release to the debtor for the payment so made. If the requirements of the statute are met, it would permit a property manager to pay money owed to a deceased tenant or landlord to the clerk of superior court.¹

REFERENCES

1. [N.C.G.S. 28A-25-6](#)

Part III: The Tenant

A "tenant" is a person who obtains certain rights to possession of real property from a landlord. A reference to "the tenant" usually includes consideration of more than one person; members of the family of the person signing the lease generally are given the same rights to use the premises. But, they would be required to establish another lease agreement if the signer vacates the premises.

Other laws apply to and regulate the relationship of a person temporarily renting lodging as a "transient." Generally, a transient is a person who resides temporarily in rented housing for a period of less than ninety days. The laws relating to transients are designed to regulate the relationships between guests and properties like hotels and boarding houses, and the relationships between vacation property owners and vacationers. If a landlord is engaged in rental of housing for a period of less than ninety days, the landlord must become familiar with the laws relating to hotels and vacation rentals also. For example, a property manager who rents resort cottages and condos by the week or month must pay a sales tax, although no such taxes are due on the typical rent collections from tenants whose terms are for ninety days or longer. And, in many localities, a "room occupancy tax" will apply to transient rentals. Eviction laws are designed to give greater protection to a tenant who occupies a principal residence instead of a temporary location.

One tenant is not necessarily the agent of another. If a landlord wishes to hold personally liable two or more persons as tenants, each should be named and should sign the lease contract - or there should be some written document on file proving that one had the authority to sign for the other.

A. Tenant Obligations

The tenant's obligations are not only financial in nature; they relate to conduct, as well. Under the Residential Rental Agreements Act, the tenant must: (1) keep the premises clean and safe and cause no unsafe or unsanitary conditions in the common areas; (2) dispose of ashes, rubbish, garbage, and such in a clean and safe manner; (3) keep all plumbing fixtures in the place of occupancy as clean as possible; (4) not deliberately destroy, deface, damage, or remove any part of the premises, nor render inoperable the smoke or carbon monoxide alarm provided by the landlord, or allow anyone else to do so; (5) comply with all applicable building and housing code obligations; (6) be responsible for all damage done to any property inside the place of occupancy, unless due to ordinary wear and tear, acts of the landlord or the landlord's agent, defective products supplied or repairs authorized by the landlord, acts of third parties not invitees of the tenant, or natural forces; and (7) notify the landlord, in writing, of the need for replacement of or repairs to a smoke or carbon monoxide alarm.¹ The Vacation Rental Act imposes similar burdens upon the tenants covered by that law.²

What constitutes "ordinary wear and tear" can be a matter of disagreement. The length of the lease may be a factor. The normal schedule for painting and refurbishing should be considered. Some landlords have rules regarding the hanging of pictures and installation of shelves. Where the written agreement specifies what is expected in terms of care, normal wear and tear might be more easily defined. If the premises contain a battery-operated smoke or carbon monoxide alarm, the law requires the tenant to replace the batteries as needed during the tenancy, unless the landlord and tenant otherwise agree in writing, and except where the smoke alarm is a tamper-resistant, 10-year lithium battery smoke alarm. The tenant is prohibited from making a smoke or carbon monoxide alarm inoperable, but may temporarily disconnect it to replace the batteries or when it has been inadvertently activated.³

A tenant who steals property of the landlord, or conceals property with the intent to take it, commits a misdemeanor if the value is \$400 or less; if the value is more, the offense is a Class H felony.⁴

REFERENCES

1. [N.C.G.S. 42-43](#)
2. [N.C.G.S. 42A-32](#)
3. [N.C.G.S. 42-44\(a2\)](#)
4. [N.C.G.S. 14-168.1](#)

B. Tenant Remedies

If the landlord does not make necessary repairs, a tenant does not have the right to withhold rent prior to a judicial determination of the right to do so, but does have the right to file an action for damages for breach of a covenant to repair.¹

Upon "material breach" by the landlord, the tenant can abandon the premises and defend any action for rent due on the basis that the landlord breached the contract first, and the tenant had the right to treat the lease as terminated.

A decision of the North Carolina Court of Appeals gives a tenant the right to offset against the rent due the difference between the rental value of the premises as if in proper condition and the value as rented.² This "rent abatement" can lead to significant counterclaims in eviction actions.

The law of North Carolina says there is an "implied covenant" by the landlord that the tenant will have "quiet enjoyment and use of the premises for the duration of the lease." The courts also speak of an "implied warranty of habitability" which means that residential premises are "fit for human habitation." An act by the landlord which deprives the tenant of the use of the premises may constitute a breach of the covenant. If the landlord fails to repair and this renders the premises uninhabitable, the tenant may be able to lawfully leave the premises and pay no further rent, arguing that the landlord breached the covenant of quiet use and enjoyment. A finding by a court that the premises are "unfit for human habitation" during the tenancy gives the tenant the right to a rent reduction ("abatement"). If the landlord disagrees with the tenant on "uninhabitable," the courts are available to hear all the facts and decide the issue.

REFERENCES

1. [N.C.G.S. 42-44\(c\)](#)
2. [Miller v. C.W. Myers Trading Post, Inc.](#), 85 N.C. App. 362, 355 S.E.2d 189 (1987)

C. Minors

A person who is under the age of majority (18) can make a lawful and binding lease contract. While the long-time rule is that a contract with a minor is voidable by the minor, that is not true with respect to the necessities of life - food, clothing, and shelter. A minor's contract for a basic apartment unit is enforceable. However, a minor's contract for a luxury home may not be enforced by judges who consider this something other than a necessity.¹

REFERENCES

1. Gastonia Personnel Corp. v. Rogers, 276 N.C. 279, 172 S.E.2d 19 (1970)

D. Security Deposits

The Tenant Security Deposit Act provides that a security deposit from a tenant in a residential dwelling unit must be deposited in a trust account with a licensed and insured bank or savings institution located in the State of North Carolina.¹ The landlord may furnish a bond from an insurance company licensed to do business in North Carolina, but this option is not available to licensed property managers, who must deposit security deposits into their trust accounts in accordance with the Real Estate Commission's rules.² The landlord must notify the tenant where the deposit is located, or provide the name of the bonding company. This must be done when the lease is signed or within thirty days after the deposit is taken.

The amount of the deposit may not exceed two weeks' rent in the case of a week-to-week tenancy; one and a half months' rent in the case of a month-to-month tenancy; and two months' rent in the case of any greater length tenancy. After the lease expires, the security deposit cannot be applied to repair conditions caused by normal wear and tear; it may be applied only to: (1) possible nonpayment of rent and costs for water, sewer or electric services provided; (2) damage to the premises; (3) damages as the result of the nonfulfillment of the rental period; (4) any unpaid bills which become a lien against the property due to the tenant's occupancy; (5) costs of re-renting the premises after a breach by the tenant, including any reasonable fees or commissions paid by the landlord to a licensed real estate broker to re-rent the premises; (6) costs of removal and storage of tenant's property after a summary ejectment proceeding; (7) court costs, and (8) late fees and any summary ejectment-related fees permitted under G.S. 42-46.³

Interest on the amount held in a trust account is a matter of contract, as agreed upon between landlord and tenant. However, according to Real Estate Commission rules, a licensed property manager who intends to deposit the security deposit in an interest-bearing trust account must first secure written authorization for the deposit from all parties having an interest in the deposit. The authorization must specify how and to whom the interest will be disbursed, and, if contained in the lease, must be set forth in a conspicuous manner which shall distinguish it from other provisions of the lease.⁴

Upon termination of the landlord's interest in the property, whether voluntarily or otherwise, the landlord or agent is required, within thirty days, to transfer the portion of the

security deposit remaining after any lawful deductions are made under the Act to either the landlord's successor in interest or the tenant. If transferred to the landlord's successor in interest, the tenant must be notified by mail of the transferee's name and address. The right to make deductions under the Act prior to transferring any balance is an exception to the general rule that deductions can only be made upon termination of the lease.⁵

Within no more than thirty days after the termination of the lease, or forty-five days in the case of vacation rentals, the landlord has a strict duty to provide the tenant with a written statement disclosing the application of the security deposit and refunding any portion of it due the tenant. With respect to long-term leases, if the extent of a landlord's claim against the security deposit cannot be determined within 30 days, the landlord is allowed to provide the tenant with an interim accounting no later than 30 days after termination of the tenancy and delivery of possession of the premises to the landlord, and then provide a final accounting within 60 days after termination of the tenancy and delivery of possession of the premises to the landlord. Landlords sometimes have difficulty determining the extent of the landlord's damages within 30 days, such as when a contractor performing repairs has yet to bill the landlord. Landlords and property managers should continue to adhere to provisions in pre-October 1, 2009 leases which require a final accounting within 30 days after termination of the tenancy and delivery of possession of the premises.

If the landlord does not know the tenant's address, any security deposit balance must be held for at least six months. The Tenant Security Deposit Act does not specifically state what must be done with the balance of the deposit after it has been held for *more* than six months for collection by the tenant whose address is unknown. However, according to the Department of State Treasurer Unclaimed Property Division, the security deposit should be presumed abandoned and turned over to the Unclaimed Property Division if the tenant cannot be located. Because there is no specific provision in the statutes stating the dormancy period for tenant security deposits, tenant security deposits are presumed abandoned 5 years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.⁴ Under certain conditions, the Unclaimed Property Division will receive property prior to the expiration of the dormancy period.⁵

If the landlord fails to comply with the Tenant Security Deposit Act, the tenant may sue the landlord to require an accounting of and recovery of the balance of the deposit, as well as for any damages that the tenant may be able to prove were sustained as a result of the landlord's non-compliance. If the failure to comply is found by a court to be willful, the court

may even order payment of the tenant's attorney fees. The landlord's willful failure to comply with the deposit, bond, or notice requirements of the Act also voids the landlord's right to retain any portion of the tenant's security deposit. Although there does not appear to be any case law specifically on the point, failure to comply with the Act could also subject the landlord to a claim for unfair and deceptive trade practices and treble damages.

According to a decision of the NC Court of Appeals,⁶ the Remedies section of the Act provides four distinct remedies for violations of the Act: (1) the "appropriate refund remedy," (2) the "full refund remedy," (3) the "damages remedy," and (4) the "attorney's fees remedy." According to the Court, the damages remedy and the attorney's fees remedy could be sought together with each other and with the other two remedies. However, the appropriate refund remedy and the full refund remedy are mutually exclusive. The appropriate refund remedy allows only for the required accounting and proper refund of the security deposit, while the full refund remedy entitles a tenant to a total refund of the security deposit, even if the tenant's actions would otherwise subject his or her deposit to partial or complete forfeiture.

The Court concluded that the full refund remedy is only available for willful violations of Section 42-50 of the Act. Section 42-50 requires landlords to hold security deposits in a trust account with an NC bank or savings institution or furnish a bond from a licensed insurance company, and to notify the tenant within 30 days after the lease starts of the name and address of the bank or institution where his deposit is currently located or the name of the insurance company providing the bond.

As noted above, whether the full refund remedy or the appropriate refund remedy applies, the damages remedy and the attorney's fees remedy also apply. Thus, a tenant is also entitled to any damages they can prove they have incurred as a result of the landlord's failure to comply with the Act, as well as attorney's fees if the landlord's failure to comply is willful. Property managers should therefore always seek to adhere strictly to the requirements of the Act.

Except as may be otherwise provided by the Vacation Rental Act, the Tenant Security Deposit Act applies to vacation rentals also.⁷ In addition to the items permitted by the Tenant Security Deposit Act, the landlord or property manager of a vacation rental may apply a security deposit to the amount of any unpaid long distance or per call telephone charges and cable television charges that are the tenant's obligation under the vacation rental agreement. The Vacation Rental Act provides that if a tenant is required to pay a portion of the rental charge or make any advance payment other than a security deposit, those funds must be

deposited in a trust account within three banking days after they are received.⁸ Disbursements are governed by the Act.⁹

REFERENCES

1. [N.C.G.S. 42-50 through 56](#)
2. 21 NCAC 58A.0116(a)
3. [N.C.G.S. 42-51](#)
4. 21 NCAC 58A.0116(c)
5. [N.C.G.S. 42-54](#)
6. [N.C.G.S. 116B-53\(c\)\(16\)](#)
7. [N.C.G.S. 116B-69\(b\)](#) and 20 N.C.A.C. 08.0110
8. Neil v. Kuester Real Estate Servs., 764 S.E.2d 498, 2014 N.C. App. 1130 (2014)
9. [N.C.G.S. 42A-18](#)
10. [N.C.G.S. 42A-15](#)
11. N.C.G.S. [42A-16](#) and [17](#)

E. Pet Fees

A reasonable non-refundable fee may be charged to tenants who will have pets on the premises, if pets are allowed.¹ The law allowing these fees contains no reference to the term "security deposit" in connection with pets, and it is apparent that these fees are considered a separate matter. A pet fee is to compensate the landlord for cleaning expenses and other expenses that may be associated with pets. If a tenant's pet causes damages, those costs can be recovered from the regular security deposit.

A "person with a disability" who has the right to be accompanied by a "service animal" or an "assistance animal" in leased premises may not be required to pay a pet fee for the animal. However, the tenant may be required to cover the cost of repair for damage the animal causes to the premises.² See discussion of service animals and assistance animals under Part VI, Section F.1.

REFERENCES

1. [N.C.G.S. 42-53](#)
2. [N.C.G.S. 168-4.2 through 4.5](#)
42 U.S.C. 3604(f)(3)(B); 24 C.F.R. 100.204

F. Late Fees

To encourage prompt payment of rent, and to place on the tenants responsible for them the costs of collection efforts, some landlords charge a fee for late payment. North Carolina law places some limitations upon “late fees” charged when rent is not paid on time. There can be only one late fee for each rent payment. The fee must be agreed on by the parties and cannot be more than \$15.00 or five percent of the amount of rent due, whichever is larger. Only when the rental payment is “five days or more late” can a fee be charged. The fee cannot be deducted from a subsequent payment and thereby cause that payment to be “late” because it is made insufficient by the deduction.¹

If the rent is subsidized by HUD, the US Department of Agriculture, a State Agency, a public housing authority, or a local government, the fee shall be calculated on the tenant’s share of the rent only.

It is very important that any late fee provided for in the lease be properly calculated. The North Carolina Court of Appeals has ruled that a lease provision for a late fee that was rounded up fifty cents over the statutory limit (\$15.00 or five percent of the rental payment) was void and therefore uncollectible.² Facts of the case indicated that even though the landlord never attempted to collect a late fee that exceeded the statutory limit, the court also ruled that the existence of the illegal late fee provision in the lease was a violation of the North Carolina Unfair and Deceptive Trade Practices Act. Any provision in a lease agreement that is contrary to the statute authorizing the collection of late fees “according to legislation enacted by the General Assembly in 2009 is against the public policy of the State and therefore void and unenforceable.”³

REFERENCES

1. [N.C.G.S. 42-46](#)
2. [Friday v. United Dominion Realty Trust, Inc.](#), 155 N.C. App. 671, 575 S.E.2d 532 (2003)
3. [N.C.G.S. 42-46\(h\)\(4\)](#)

G. Payment by Check

Most landlords are glad to accept bank checks when the rent is due. But no one is pleased when one is returned marked "Insufficient Funds." While bank employees do make

mistakes, most often the check writer has been careless or is attempting to delay or avoid paying what is owed.

If a "bad check" is given and received, that does not extinguish the payment obligation of the check giver. The law describes the event as a "conditional payment" which does not cause the debt to be extinguished. The check receiver can sue to collect the debt, or bring suit to collect the amount of the check (and all penalties the law provides for the offense.)¹

Writing a worthless check is a criminal offense if the writer has no funds to cover it and no appropriate credit arrangement with the bank - and if the check receiver has no reason to believe it cannot be cashed immediately upon receipt.²

A landlord should have an established policy on returned checks, communicated effectively to tenants. Since a dishonored rent check means there has been no payment of rent, the landlord can take action that would be appropriate when the rent is unpaid. Any activity to collect should be done only by persons familiar with the rules of "fair debt collection practices." Harassment of debtors can result in significant penalties.³

A general commercial practice to discourage the writing of worthless checks is charging a "processing fee" when a check is returned for insufficient funds or the account was closed when the check was written. The maximum fee is \$35.00.⁴ This processing fee can be collected in addition to recovering any service charges imposed on the check recipient by their bank for processing the dishonored check.⁵ A person to whom a bad check is written can recover additional sums if, within 30 days following written demand therefore, the person who wrote the bad check doesn't pay (i) the amount of the check, (ii) any service charges imposed on the check recipient by their bank for processing the dishonored check, *and* (iii) the twenty-five dollar processing fee. The written demand has to be sent by certified mail and the form of the letter is set out in subsection (a1) of the statute.

If the bad check writer doesn't pay the amount claimed in the demand letter within 30 days, he or she is also liable for "additional damages of three times the amount owing on the check, not to exceed five hundred dollars or to be less than one hundred dollars." A claim for the amount of the check, the service charges and processing fees, and the treble damages may be made by a subsequent demand letter. The second demand letter must also be sent by certified mail and the form of the letter is set out in subsection (a2) of the statute.

If the person who wrote the bad check doesn't pay all amounts owed within 30 days of the mailing of the second letter, and the recipient of the bad check files suit, the presiding judge or magistrate has the discretionary authority to award the prevailing party a reasonable

attorney's fee. The court or jury may, however, waive all or part of the additional damages "upon a finding that the defendant's failure to satisfy the dishonored check... was due to economic hardship."

REFERENCES

1. [N.C.G.S. 6-21.3](#)
2. N.C.G.S. [14-106](#) and [14-107](#)
3. [N.C.G.S. 75-50 through 56](#)
4. [N.C.G.S. 25-3-506](#)
5. [N.C.G.S. 6-21.3](#)

H. Insolvency or Bankruptcy of Tenant

A bankruptcy filing can have a substantial effect on the landlord-tenant relationship. The manner in which a landlord should handle a tenant's bankruptcy will largely depend on several variables including what kind of bankruptcy petition was filed, where things stand with the tenant at the time the bankruptcy petition is filed, and what the tenant's intentions and actions are after the bankruptcy is filed.

Typically, individuals file for bankruptcy protection under either Chapter 7 or Chapter 13 of the United States Bankruptcy Code (the "Code"). Chapter 7 bankruptcies involve liquidation of a debtor's non-exempt assets by a court-appointed trustee for distribution to creditors. Often, Chapter 7 debtors have few or no assets for distribution. Chapter 13 bankruptcies are for individuals who earn wages and have some excess income after payment of their necessary living expenses. This income funds a Chapter 13 plan which pays creditors over a period of between 36 and 60 months. A trustee is appointed in a Chapter 13 case to monitor the debtor and to receive and distribute the payments to creditors. Upon completion of a bankruptcy under Chapter 7 or 13, the debtor is discharged of certain debts.

The filing of a petition under either Chapter 7 or Chapter 13 imposes an automatic "stay". This stay bars landlords and other creditors from pursuing any collection and enforcement proceedings against the debtor. Unless and until the bankruptcy court grants permission (called "relief from the stay"), a property manager cannot demand past-due rent, apply a tenant's security deposit to pay past-due rent, or pursue an eviction action. Violations of the automatic stay are dealt with harshly; the property manager can be sanctioned and ordered to pay the tenant's damages and attorney's fees.

The stay applies if the tenant files for bankruptcy after the landlord has obtained a judgment for possession in a summary ejectment case but before an order for possession has been executed. However, the stay will only provide limited protection for the tenant in this situation. The Code provides that the automatic stay will automatically terminate 30 days after the bankruptcy filing date to permit landlords to continue any eviction against a debtor-tenant where the landlord had already obtained a judgment for possession prior to the bankruptcy filing. Some Chapter 13 trustees may object to a landlord enforcing a pre-petition judgment for possession on the grounds that tenant's personal property in the leased premises (i.e. furniture, appliances, etc.) is "property of the estate" and should be subject to seizure by the landlord. You should advise your landlord clients of this possibility and advise them to seek independent counsel before proceeding with an eviction under these circumstances.

In both Chapter 7 cases and Chapter 13 cases, the debtor is given the option of either assuming (i.e. affirming) a residential lease or rejecting it. Although the debtor is given a certain amount of time to decide on these options, a property manager can and should contact the tenant promptly after receiving notice of the bankruptcy to determine his or her intentions. If the tenant advises the manager that he or she does not intend to pay future rent, the landlord should be prepared to seek prompt relief from the automatic stay if a rent payment is missed. However, as noted above, a manager should NOT demand rent during this conversation; such a demand would be regarded as a violation of the automatic stay.

A bankruptcy filing does not relieve the tenant of their obligation to pay any rent that comes due after the bankruptcy petition is filed. In fact, the Code requires the debtor (or the trustee in a Chapter 7 case) to timely perform all obligations of the lease from the date of the bankruptcy filing until the date the lease is assumed or rejected. If the debtor or trustee fails in that duty, the landlord may seek immediate relief from the automatic stay. Once relief is granted, the landlord can proceed with an action for possession of the premises. Any claim for past-due rent will have to be asserted by filing a proof of claim (see below).

In a Chapter 7 case, the Code provides that a lease of residential property is automatically rejected if the trustee does not assume or reject the lease within 60 days after the bankruptcy is filed. If the lease is rejected, either expressly or by expiration of the 60-day period, the tenant is considered to be in violation of the lease and the landlord can move forward with a summary ejectment proceeding without having to get relief from the stay. In a Chapter 13 case, there is no 60-day deadline for the debtor to exercise the assumption vs. rejection option. Instead, the Chapter 13 debtor may assume or reject a residential lease any

time before the confirmation of a Chapter 13 plan. The time frame for confirmation varies from court to court. If the scheduled date for confirmation is far off, and the tenant is having difficulty making timely rent payments, a property manager may want to ask the bankruptcy court to set an earlier deadline for the trustee to make the assumption vs. rejection decision.

If the landlord is owed rent on the date the bankruptcy petition is filed, another thing the landlord must do is file a proof of claim. In that circumstance, the landlord should have been included on the list of creditors prepared by the tenant's attorney, and the landlord or property manager should have received a notice from the court regarding the case. That notice will include a proof of claim form that must be completed and filed by the stated deadline. If neither the landlord nor the manager have received notice of the tenant's bankruptcy filing, copies of the proof of claim form and the applicable notice to creditors may be obtained from the Clerk of the Bankruptcy Court. Once completed, the proof of claim will stake the landlord's claim for unpaid rent and other charges. If a security deposit is being held, the deposit should be mentioned in the proof of claim to establish the landlord's priority status with respect to those funds.

The strategy for dealing with a tenant's bankruptcy will vary based on multiple factors. However, in all circumstances, property managers should exercise extreme care to avoid any action that could be deemed a violation of the Code's automatic stay provision. If a manager has questions about whether a particular action might violate the stay, the landlord should be advised to consult with an experienced bankruptcy attorney.

I. Surrender and Abandonment

The term "surrender" is an old "common law" word that describes a tenant's giving up the premises by agreement with the landlord. The term "abandonment" describes something the tenant alone has done. If a landlord intends to sue a tenant for damages after a surrender, the landlord and tenant must clearly agree that this is to be expected by the tenant; otherwise, there is no agreement for a surrender, and the tenant remains bound by the lease.

In the event of abandonment by the tenant, the landlord may treat the event as a breach of the lease contract, and take appropriate action. Whether a tenant has abandoned the premises is a question of fact, and in court may be a jury determination. One tenant may have told other tenants of an intent to leave, then moved out all personal possessions; another tenant may have said nothing, failed to pay the rent when due, and upon examination of the premises it is difficult to determine whether any personal possessions have been taken. Between these two black and white examples are many shades of gray.

While abandonment is always determined by the facts of each case, when it happens the landlord has certain rights with respect to any personal property remaining on the premises. While once available as a "common law" remedy when a tenant's financial obligations were unpaid, "distress and distraint" are now prohibited by statute, and thus, a landlord can no longer simply take possession of the tenant's personal property until the debt is paid.¹ A landlord's rights concerning a tenant's personal property are discussed more fully in Part IV under "Abandoned Personal Property."

The landlord is entitled to rent due after there is an abandonment if the term has not ended. The landlord can sue when the premises are re-rented or when the term ends - when any offsetting rental income can be credited to the tenant's debt. A suit may be brought for rent currently owed, but not for future rental income when the availability of offsetting income is yet unknown. The tenant also can be sued for damage to the dwelling unit after an abandonment (excluding "ordinary wear and tear").

Abandonment of vacation rental property because of mandatory evacuation of an area is covered by the Vacation Rental Act, which generally provides that the tenant will pay for the entire term if insurance coverage was offered or obtained to cover such an event.²

REFERENCES

1. [N.C.G.S. 42-25.7](#)
2. [N.C.G.S. 42A-36](#)

J. Early Termination by Victims of Domestic Violence, Sexual Assault or Stalking

Any protected tenant may terminate his or her rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord shall be accompanied by either: (i) a copy of a valid order of protection issued by a court pursuant to Chapter 50B or 50C of the General Statutes (excluding an "ex parte" order, which is an order issued by a court after hearing only one side of the controversy), (ii) a criminal order that restrains a person from contact with a protected tenant, or (iii) a valid "Address Confidentiality Program" card issued pursuant to General Statute Section 15C-4 to the victim or a minor member of the tenant's household. A victim of domestic violence or sexual assault must submit a copy of a safety plan with the notice to terminate. The safety plan, dated during the term of the tenancy to be terminated, must be provided by a domestic

violence or sexual assault program which substantially complies with the requirements set forth in General Statute Section 50B-9 and must recommend relocation of the protected tenant.¹

Upon termination of a rental agreement under this statute, the tenant who is released from the rental agreement is responsible for the rent due under the rental agreement prorated to the effective date of the termination which is payable at the time that would have been required by the terms of the rental agreement. The tenant is not liable for any other rent or fees due only to the early termination of the tenancy. If the termination takes place 14 days or more before occupancy, the tenant is not subject to any damages or penalties.²

Notwithstanding the release of a protected tenant from a rental agreement under the statute, or the exclusion of a perpetrator of domestic violence, sexual assault, or stalking by court order, if there are any remaining tenants residing in the dwelling unit, the tenancy shall continue for those tenants. The perpetrator who has been excluded from the dwelling unit under court order remains liable under the lease with any other tenant of the dwelling unit for rent or damages to the dwelling unit.³

REFERENCES

1. [N.C.G.S. 42-45.1\(a\)](#)
2. [N.C.G.S. 42-45.1\(b\)](#)
3. [N.C.G.S. 42-45.1\(c\)](#)

K. Tenant Rights under Service Member Civil Relief Acts

The federal Servicemembers Civil Relief Act ("federal SCRA") was enacted in 2003 to revise and expand the Soldiers' and Sailors' Civil Relief Act of 1940. The federal SCRA provides certain protections for active duty servicemembers, including the areas of rental agreements and evictions.¹ The North Carolina Servicemembers Civil Relief Act ("North Carolina SCRA") was enacted in 2019. It adopts and incorporates all of the protections of the federal SCRA, making any violation of the federal SCRA a violation of the North Carolina SCRA. The North Carolina SCRA extends the protections of the federal SCRA to members of the North Carolina National Guard that are serving on active duty at the state level for a period of more than thirty consecutive days.²

1. Early termination of a lease.

Under the federal SCRA (and by extension, the North Carolina SCRA), a servicemember may terminate a residential lease (i) if the servicemember enters into military service after signing the lease, (ii) if the servicemember, while in military service, signs the lease and thereafter receives orders for a permanent change of station or to deploy for not less than ninety days, or (iii) if the servicemember, while in military service, signs the lease upon receipt of an order for a permanent change of station or to deploy for not less than ninety days and thereafter receives a stop movement order in response to a local, national, or global emergency, which prevents the servicemember or the servicemember's dependents from occupying the premises leased. A servicemember's termination of a lease under the federal SCRA also terminates any obligation a dependent of the servicemember may have under the lease.

Termination of a lease is accomplished by delivery of written notice of termination and a copy of the servicemember's military orders to the landlord or the landlord's agent. For leases that provide for monthly payment of rent, a termination based on receipt of permanent change of station orders or an order to deploy for ninety days or more is effective thirty days after the first date on which the next rental payment is due after the notice has been delivered. A termination based on receipt of a stop movement order is effective when proper notice has been delivered.³

A servicemember or his or her spouse has a similar right to terminate a vacation rental agreement under the North Carolina Vacation Rental Act.⁴ A "military technician" as defined in section 10216 of Title 10 of the United States Code also has a similar right under North Carolina law to terminate a lease agreement.⁵

2. Protection against default judgments.

Under the federal SCRA (and by extension, the North Carolina SCRA), in any lawsuit where a defendant does not appear in the case, including but not limited to a summary ejectment case, the plaintiff must file an affidavit with the court confirming whether the defendant is in military service. This is addressed in more detail in Part V, Section F of this *Handbook*.

3. Additional protections under North Carolina SCRA.

In addition to the protections provided by the federal SCRA, the North Carolina SCRA provides that if a member of the North Carolina National Guard, or a member of the National Guard of another state who resides in this State, has a lease agreement on their residence and the lease agreement expires while they are engaged, for any period of time, in State active duty or service under an order of the governor of another state that is similar to State active duty, they are entitled to extend the lease agreement to terminate ten days after their State active duty or service terminates, upon providing written or electronic notice to the landlord or the landlord's representative. The terms of the lease agreement during this period of extension are on the same terms that applied during the month before the expiration.⁶

REFERENCES

1. 50 U.S.C. 3951 et seq.
2. [N.C.G.S. 127B-25 et seq.](#)
3. 50 U.S.C. 3955
4. [N.C.G.S. 42A-37](#)
5. [N.C.G.S. 42-45](#)
6. [N.C.G.S. 127B-32](#)

L. Early Termination by Tenants Residing in Certain Foreclosed Property

Any tenant who resides in residential real property containing less than 15 rental units that is being sold in a foreclosure proceeding may terminate the rental agreement for the dwelling unit after receiving written notice of the sale from the mortgagee or trustee by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 10 days but no more than 90 days after the date of the notice of sale, provided that the landlord has not cured the default at the time the tenant provides the notice of termination. Upon termination of a rental agreement under the statute, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at the time that would have been required by the terms of the rental

agreement. The tenant is not liable for any other rent or damages due only to the early termination of the tenancy.¹

If residential real property containing 15 dwelling units or more is the subject of a foreclosure proceeding, the law does not require the mortgagee or trustee to provide the tenants written notice of the sale, and the tenants do not have any similar statutory right to terminate on 10-days prior written notice. However, if such a property is sold at foreclosure, an order for possession of the property may not be issued by the clerk of court unless 30 days' notice has been given to the party or parties who remain in possession at the time the application for the order of possession is made.²

REFERENCES

1. [N.C.G.S. 42-45.2](#)
2. [N.C.G.S. 45-21.29\(k\)\(5\)](#)

M. Rights of Tenants to Continue Residing in Foreclosed Property

Under the Federal “Protecting Tenants at Foreclosure Act of 2009,” in the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property, any bona fide tenant may occupy the premises until the end of the remaining term of the lease, except that a purchaser who will occupy the premises as a primary residence may terminate a lease effective on the date of the purchase, subject to the receipt by the tenant of a 90-day notice to vacate. A tenant will be considered “bona fide” if: (1) the mortgagor or the child, spouse, or parent of the mortgagor under the lease is not the tenant; (2) the lease was the result of an arms-length transaction; and (3) the lease requires the receipt of rent that is not substantially less than fair market rent for the property or the rent is reduced or subsidized due to a Federal, State or local subsidy. The Act was permanently extended by Congress in 2018 when it repealed the “sunset” provision in the Act that would cause it to automatically expire.

The Act provides that if there is a foreclosure on a property where a tenant resides under the Section 8 Program, the tenant is allowed to keep their Section 8 lease and the person or entity who acquires title in the foreclosure proceeding is required to assume the housing assistance payment contract associated with the lease. There is an exception for a person who will occupy the premises as their primary residence. In such a case, that person

may terminate the Section 8 lease effective on the date of the foreclosure purchase. However, they must give the tenant a 90-day notice to vacate.¹

REFERENCES

1. Public Law 111-22 (May 20, 2009)

Part IV: The Premises

The real property acquired for a limited time by a tenant through a lease is called the "premises." This can be land, land and all buildings located on it, or a certain space in a building. In multi-family housing, there are "common areas" available for the use of all tenants who are renting "private" space. Because there are occasional disputes regarding the exact area controlled by the tenant, it is wise to describe the premises with care in the lease agreement.

Landlord liability for the condition of the premises continues to expand as a result of new laws, new information about hazards, and the rulings of judges. Tenant health problems attributable to asbestos, lead poisoning, and radon gas can become the basis for lawsuits against the landlord and the property manager.

A. Repairs and Improvements

The landlord is obligated by law to make repairs necessary to maintain habitability, and the tenant cannot agree to disregard this duty of the landlord.¹ The tenant is not obligated to repair. However, a landlord and tenant may have a written contract in which the tenant agrees to repair.² Such a contract must be "supported by adequate consideration," which could be a reduced rent.

In the absence of an agreement stating otherwise, the landlord is not obligated to the tenant to improve the premises. (Note an exception to this rule described in Part VI, Section F with respect to alterations requested by a handicapped person.) A covenant to repair is not a covenant to improve. In regard to improvements by the tenant, a tenant does not have the right to make substantial changes in leased premises without the consent of the landlord, unless otherwise stated in the lease. Because making certain alterations may be desirable to the tenant at the time the lease is established, provisions may be incorporated into the lease authorizing such changes.

Unless arrangements are made for the landlord to reimburse the tenant for improvements, there is no obligation on the part of the landlord to pay the tenant for such alterations. At the end of the lease term the tenant cannot remove "improvements" without restoring the premises to their former condition.

Repairs done under the supervision or control of the landlord must be done in a manner that does not cause harm. When repair work can cause asbestos fibers to be released into the air, the people doing the repair work should know how to avoid that hazard.

REFERENCES

1. [N.C.G.S. 42-42\(a\)\(2\)](#)
2. [N.C.G.S. 42-42\(b\)](#)

B. Insurance

Without a covenant or agreement in a lease to the contrary, there is no obligation for either the landlord or the tenant to obtain insurance against damage or loss by fire or other danger. While the general rule is that each party insures against loss of the property owned by that person, some tenants may expect the landlord to pay for personal property damaged by some outside activity, such as a burst water pipe in a common area.

The lease should set out the tenant's obligation to insure as desired, and it may give notice of the landlord's lack of insurance to protect the tenant.

C. Utilities and Appliances

North Carolina law does not require that all rental housing have electricity or indoor plumbing. Many rural dwellings have neither. However, most urban areas have housing codes, and landlords must know and comply with them.¹ Utilities (water, electricity, gas) and furnishing of basic appliances (refrigerator, stove, washer, dryer, etc.) should be the subject of specific provisions in the lease agreement.

The lease agreement should provide clear responsibility for payment of utilities, and for connection, disconnection, and security deposits for these services. It is generally expected that the landlord will incur no obligations for these services except by contract. There should be no doubts as to who is responsible for providing any appliances the tenant expects to use and who will order and pay for any needed repairs of them. The landlord may desire to have notice if certain services are being discontinued, such as electrical power in the middle of winter, and the lease may impose this duty on the tenant.

REFERENCES

1. [N.C.G.S. 42-42\(a\)\(1\)](#)

D. Parking Areas and Facilities

The landlord's duties are not only in regard to the rental unit itself, but they extend to the grounds, and to the common areas and facilities which are available for the use of all

tenants. Specifically, one of the several obligations North Carolina law imposes on the landlord is to keep all common areas of the premises "in safe condition."¹

Parking areas and sidewalks of an apartment complex should be monitored during weather conditions that might create danger. The obligation of the landlord of a multifamily housing project is similar to that of a merchant with respect to icy sidewalks and parking areas. A "reasonable person" standard will be applied if there is an injury and a lawsuit, with the jury deciding what a reasonable person should have done in the landlord's circumstances.

State and Federal fair housing laws require landlords to make "reasonable accommodations" in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.² This includes parking areas. Thus, for example, a "reasonable accommodation" might include assigning a disabled tenant a handicapped parking space as close to his or her unit as possible in an apartment complex. Consequently, if a tenant requests special parking consideration because of a perceived disability, the landlord should make a written report of the request, and the action taken. This precaution should prevent government intervention and litigation, and would give the landlord the advantage of having documented evidence of reasonable responses if a later request is determined to be "unreasonable."

REFERENCES

1. [N.C.G.S. 42-42\(a\)\(3\)](#)
2. [N.C.G.S. 41A-4\(a\)\(2b\)](#); 26 U.S.C. 3604(f)(3)(B)

E. Abandoned Vehicles

North Carolina's law relating to abandoned vehicles tries to balance the competing interests of landowners who must cope with cars and trucks parked without permission with the interests of American citizens whose property rights cannot be taken without due process of law.

Parking by tenants should be covered by appropriate rules, considering the premises and the anticipated needs of all the tenants.

A vehicle blocking access can be treated differently from one that simply has been parked and not used in months. Unless a parked vehicle poses some hazard to health or safety, law enforcement authorities normally will not assist with its removal. Check on applicable city and county ordinances before taking any action to remove a vehicle, and request a

lawyer's assistance when you expect a challenge or a claim that someone's property rights were violated by the removal.

When a vehicle is towed at the request of a parking lot owner or manager, a contract is created by the owner/manager and the towing company. The contract between these two parties does not create a legal responsibility for payment of towing charges by the car owner. Because an irate vehicle owner may not want to pay the towing charge, and may even want to sue the person who requested the towing, a good business practice is to have an adequate sign at the entrance identifying the rules for parking and towing, along with the name and telephone number of the towing company that has the towing contract. Then, even a person whose car has been inconveniently parked in an emergency situation cannot argue that the towing notice was inadequate. If there are no such signs at the entrance areas notifying motorists that cars left there will be towed, a landowner who has a parking lot for business purposes has no statutory right to have a car towed from it.

The removal of unauthorized vehicles from private parking lots is regulated by statute in the following counties and municipalities: the counties of Craven, Cumberland, Dare, Forsyth, Gaston, Guilford, Mecklenburg, New Hanover, Orange, Richmond, Robeson, Wake and Wilson; municipalities in the aforementioned counties; and the cities of Charlotte, Durham, Jacksonville and Fayetteville. There, posting an entrance sign at least 24 inches by 24 inches, and marking each space with a lessee's name, gives protection to the lot owner or lessee who tows the offending car. There is no civil or criminal liability unless there is negligent or willful damage to the towed car. And, the offending driver can be charged with a misdemeanor in the criminal court.¹

REFERENCES

1. [N.C.G.S. 20-219.2](#)

F. Abandoned Personal Property

Seven days after being placed in lawful possession by execution of a writ of possession, a landlord may throw away, dispose of, or sell all items of personal property remaining on the premises (unless the tenant requests possession of it).¹ If the property has a total value of less than Five Hundred Dollars (\$500.00), the property is "deemed abandoned" five days after the time of execution of a writ of possession, and the landlord may throw away or dispose of the property (unless the tenant requests possession of it).² The statute does not define "dispose of" but since the statute describes "sell" as an alternative, it seems that selling

is available only for property valued at more than \$500.00. Should the tenant request possession during the seven-day or five-day waiting period, the landlord must make the property available during regular business hours or at an agreed upon time.

If the landlord chooses to sell the personal property, at public or private sale, the property may be removed to another location for storage. Notice must be given to the former tenant "by first-class mail to the tenant's last known address at least seven days prior to the day of the sale." The statute provides that the proceeds may be applied to "the unpaid rents, damages, storage fees, and sale costs." If there is a surplus, it must be given to the tenant within seven days "upon request" or otherwise "delivered to the government of the county in which the rental property is located."

If the property is valued at seven hundred fifty dollars (\$750.00) or less, the landlord may, as an alternative to the above procedure, deliver the property to a charitable organization which provides clothing and household goods to persons in need, provided that the charitable organization agrees to store the tenant's property for thirty days before disposing of it and to release it to the tenant at no charge within the 30-day period.³ The landlord is required to (i) post a notice at the premises containing the name and address of the property recipient, (ii) post the same notice for 30 days or more at the place where rent is received, and (iii) send the same notice by first-class mail to the tenant at the tenant's last known address.

When a tenant leaves personal property behind on the premises, there may be some complicated legal issues, including rights guaranteed by the United States Constitution. As a matter of equity, judges usually examine each case individually, taking into account all circumstances and evidence in order to determine what is fair and reasonable. A tenant may no longer be using the premises due to some accidental injury that renders the tenant comatose. In such a case, the tenant never intends to abandon the property.

If an object is left behind and the landlord discards it believing it to be worthless, the tenant may claim it was a valuable antique and was not abandoned. The landlord may be sued, and held liable for the value of the antique. Therefore, a wise business practice for the landlord is to have evidence (usually photographs) of any property that is removed.

If a landlord holds money or property once legally owned by someone else and that person or company has not clearly and directly disposed of it in a manner recognized by law, it probably is subject to the laws pertaining to abandoned property.⁴ The State Treasurer is charged by law with the duty to take such property, sell it, and place the proceeds in a fund that can be used to compensate the owner if found, and otherwise to place the money in the State Education Assistance Authority "for loans to aid worthy and needy students. The North

Carolina Unclaimed Property Act clearly applies to rent refunds that are not claimed by former tenants. The Treasurer has authority to reject property, so has no duty to take all the worthless property abandoned by tenants.

REFERENCES

1. [N.C.G.S. 42-25.9\(g\)](#)
2. [N.C.G.S. 42-25.9\(h\)](#)
3. [N.C.G.S. 42-25.9\(d\)](#)
4. [N.C.G.S. 116B-52 et. seq.](#)

G. Disposal of Personal Property of Deceased Tenant

Under certain circumstances, the law permits (but not require) a landlord to dispose of the personal property of a deceased tenant who was sole occupant of the dwelling unit.¹ The landlord may take possession of the property upon the filing of an affidavit on a prescribed form in the clerk of court's office if at least ten (10) days have elapsed from the date the paid rental period for the dwelling unit has expired and the deceased tenant's estate is not being administered. The form is called "Affidavit for Removal of Personal Property of Deceased Residential Tenant" (AOC-E-450). Upon the filing of the affidavit, the landlord may remove the property from the dwelling unit and deliver it for storage to any storage warehouse in the county in which the dwelling unit is located or in an adjoining county if no storage warehouse is located in that county. If, at least ninety (90) days after the filing of the affidavit, the deceased tenant's estate is still not being administered, the landlord may sell the property or deliver it into the custody of certain nonprofit organizations in accordance with certain procedures.

There is also a statutory procedure for small estates that permits the collection of a deceased person's property by affidavit by a public administrator, executor, devisee, heir, or creditor of the decedent, (depending on whether the decedent died with or without a will), at any time after thirty days from the date of the decedent's death.² A person who has presented an Affidavit for Collection of Personal Property of Decedent (AOC-E-203B) is entitled to remove or otherwise dispose of the decedent's personal property located in the premises, and a landlord or landlord's agent may, at the direction of that person, remove, throw away, or otherwise dispose of the personal property to the same extent as if the

landlord or landlord's agent dealt with a duly qualified personal representative of the decedent.³

If a landlord seizes possession of a deceased tenant's personal property in any manner not in accordance with the law, the landlord may be liable to the deceased tenant's estate for actual damages, but not including punitive damages, treble damages, or damages for emotional distress.

REFERENCES

1. N.C.G.S. [28A-25-7](#); [42-36.3](#)
2. N.C.G.S. [28A-25-1](#); [28A-25-1.1](#)
3. N.C.G.S. [28A-25-2](#)

H. Disposal of “Potentially Confidential Materials” of Attorney Tenant

If premises are leased to an attorney, and the landlord has actual knowledge that the tenant is an attorney, and there are “potentially confidential materials” (client files, trust or operating account records, or other materials relating to client matters) remaining on the premises when the landlord takes possession (by whatever means), recently-enacted legislation establishes a procedure regarding the disposal of any such materials.

At least 15 days prior to the destruction or discard of any potentially confidential materials, the landlord must notify the NC State Bar. During the 15-day period after notice, the landlord may move for storage purposes, but may not throw away, dispose of, or sell, the potentially confidential materials. The State Bar or its designee may take possession of the materials, at its sole expense, within the 15-day period. If neither the State Bar nor its designee takes possession of the potentially confidential materials within the 15-day period, the landlord may destroy or discard the materials in accordance with the lease agreement with the defaulting tenant.

A landlord who attempts in good faith to comply with these requirements will not be liable for losses to any person arising directly or indirectly out of the disposal of any potentially confidential materials.

REFERENCES

1. [N.C.G.S. 42-14.4](#)

I. Damage to Premises

The tenant once was obligated by common law to continue to pay rent even when the residence located on the leased property was destroyed by fire or other forces. This rule has been amended, however, by act of the Legislature. When a building is destroyed "to the point where it cannot be made fit for the purpose for which it was rented except at an expense exceeding the amount of one year's rent," the tenant may treat the lease as terminated by notifying the landlord within 10 days from the damage, vacating the premises, and paying rent up to the time of destruction.¹ There is an exception to this rule if the lease has other specific provisions or if the damage is a result of the tenant's negligence.

If the landlord and tenant have individual interests that have been damaged, each has a right to file a separate lawsuit for the injuries done by a third person. The wrongdoer is obligated to compensate each of the parties for their own individual injuries.

REFERENCES

1. [N.C.G.S. 42-12](#)

J. Security

When someone outside the landlord-tenant relationship causes personal injury to someone on the premises, the landlord, the tenant, or both may be liable. The issue is whether there was negligence attributable to either or both. Civil liability for negligence exists when action, or inaction, would be expected to result in the injury suffered.

The key issues will be the knowledge of a potential danger from outsiders, and the predictability of the injuries actually suffered. Judges have become increasingly willing to let a jury decide if a business operator should have taken some "reasonable" actions to protect persons on the property when it is known that criminal activities have occurred in the area.

Security is an increasingly important issue for tenants. Promises of security in advertisements and brochures can become the basis for a lawsuit when a tenant is harmed by a criminal and real security is lacking. Leases now are being written with disclaimers as to security. Warnings to tenants can be useful, and inclusion of current information about nearby crimes and advice from law enforcement authorities can be helpful in defending a case alleging the landlord did not do what a reasonable person should do to help tenants avoid being victims of crime.

As a general rule, a landlord or property manager does not have any duty to protect a tenant against potential injury caused by a dangerous condition on a neighboring property. In the recent case of Lampkin v. Housing Management Resources, Inc., the owner and property manager of an apartment complex was sued by the father of a young child who had sustained permanent brain injury after falling into a pond located on the property adjacent to the apartment complex.¹ There was a chain-link fence between the apartment complex and the pond property, but there were portions of that fence that were broken. The legal theory relied upon was that the apartment complex owner and manager were negligent when they failed to maintain the fence between their property and the pond. The NC Court of Appeals rejected this argument and found that a landowner's duty of reasonable care does not extend to guarding against injury caused by a dangerous condition on a neighboring property. According to the court, the duty to protect from a condition on property arises from a person's control of the property; in the absence of control, there is no duty.

The Lampkin court recognized that the owner may assume a duty to protect against injury by a course of conduct that includes erecting a fence for the purpose of security. While an "assumption of duty" doctrine is recognized in North Carolina, it is only applicable where the party affirmatively demonstrates a willingness to take on (or assume) a duty. The court said that merely owning a fence was not enough. The fact that the owner of the pond told an employee in the apartment complex office that children from the apartment complex were coming on to her property was, in the court's view, insufficient to show that the defendants had undertaken a duty to protect against injury. Also, the employee's statement that "they would look into the matter" was described by the court as "wholly noncommittal" and was not evidence that defendants had taken action to provide a needed service to the residents of the apartment complex.

REFERENCES

1. Lampkin v. Housing Management Resources, Inc., 725 S.E.2d 432 (N.C. Ct. App. 2012)

K. Vicious Animals

North Carolina case law provides that an owner or keeper of a vicious animal is strictly liable for injuries caused by the animal if the owner or keeper knew or should have known of the animal's vicious propensity.¹ In addition, a recent North Carolina Supreme Court case held that a landlord was liable for injuries caused by the tenant's dog based on the negligence of the

landlord's property manager.² The tenant's lease permitted him to keep one Rottweiler dog on the property. The lease also required the tenant to "remove any pet...within forty-eight hours of written notification from the landlord that the pet, in the landlord's sole judgment, creates a nuisance or disturbance or is, in the landlord's opinion, undesirable." The evidence demonstrated that the management company permitted the tenant to keep two Rotweilers dogs, that the dogs frequently were allowed to run freely, that on two previous occasions, nearby neighbors had been attacked by one of the dogs, and that the property manager knew of the incidents. The court stated that a landlord is potentially liable for injuries to third persons if the landlord has control of the leased premises, and that in the case under consideration, the lease agreement granted the property manager and landlord sufficient control to remove the danger posed by the tenant's dogs. The court also concluded that the negligence of the property manager could be attributed to the landlord based on the principal-agent relationship.

REFERENCES

1. Swain v. Tillett, 269 N.C. 46, 152 S.E.2d 297 (1967)
2. Holcomb v. Colonial Associates, L.L.C., 358 N.C. 501, 597 S.E.2d 710 (2004)

L. Disclosure of Lead-Based Paint Information When Leasing Property

With the enactment of the Residential Lead-Based Paint Hazard Reduction Act of 1992, Congress banned the use of lead-based paint in all residential dwellings.¹ Older properties having such paint can cause release of lead through peeling, chipping, and external friction. The Environmental Protection Agency has estimated that more than half of the nation's homes have this paint, but has said that some pre-1978 homes have none. According to regulations promulgated jointly by HUD and EPA,² the landlord and leasing agent must determine whether rental housing is of pre-1978 construction. The leasing agent must inform the owner about these regulations, and the leasing agent must obtain from the owner any information existing about any test reports and other records relating to lead-based paint on the property. For multi-unit dwellings, the disclosure to an individual tenant must include records and reports of testing that has been done in common areas and done in other units when this was part of an evaluation of the property as a whole.

Lease agreements for pre-1978 housing (referred to as "target housing") must include, either as an attachment or in the lease itself, the following "elements":

- (1) A Lead Warning Statement with the following language:

“Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.”

- (2) A statement by the landlord disclosing the presence of known lead-based paint and/or lead-based paint hazards in the housing or indicating no knowledge of lead-based paint and/or lead-based paint hazards. If there are known lead-based paint or lead-based paint hazards, the landlord must also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards.
- (3) A list of any records or reports available to the landlord pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the tenant. If no such records or reports are available, the landlord shall so indicate.
- (4) A statement by the tenant affirming receipt of the information set out in paragraphs (2) and (3) above, as well as acknowledging receipt of a copy of the pamphlet produced by the EPA entitled "Protect Your Family from Lead in Your Home".
- (5) A statement by the agent that the agent has informed the landlord of the landlord's disclosure obligations and that the agent is aware of his/her duty to ensure compliance.
- (6) The signatures of the landlord, agent, and tenant certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature.

The landlord and agent are required to retain a copy of the completed attachment or lease containing the information required under (1) through (6) above for no less than 3 years from the commencement of the leasing period.

A "government-certified inspector" may determine that pre-1978 property is free of paint or other surface coating that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight, and property so certified is exempt from these requirements. In addition to the exemption for property found by a certified inspector to be free of lead-based paint, there are exemptions for housing for the elderly or disabled in which

children under age six are not expected to reside; housing which has a combined sleeping and living area; and for leases of one hundred days or less that are not renewable. Once a tenant gets all of the disclosure information, there is no requirement to provide it again at the time of renewal, unless new information or test reports are available. And, while the law is somewhat complicated and the required practices cumbersome, there is no legal requirement that a landlord test a property for lead-based paint or lead-based paint hazards; and if any are known, there is no requirement that the landlord perform any abatement.

Failure to comply with the disclosure and all of the other requirements of the law can result in fines of up to ten thousand dollars (\$10,000.00) for each violation, and imprisonment. In addition, the damages a tenant can prove to a jury that are attributable to failure to comply (as in the case of no disclosure) can be tripled by the court. These penalties are applicable to the owner and to the leasing agent.

REFERENCES

1. 42 U.S.C. 4852d
2. 24 CFR 35.80 through 35.98

M. Renovation of Pre-1978 Housing

Regulations have been developed by the EPA under the Toxic Substances Control Act¹ that apply to renovations performed for compensation and which result in the disturbance of painted surfaces in pre-1978 housing and child-occupied facilities (day care centers, preschools, etc.).² The purpose the regulations is to ensure that: (1) owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before renovations begin; (2) renovators are certified; and (3) **lead-safe** work practices are followed during renovations.

The Toxic Substances Control Act authorizes the establishment of State programs to administer and enforce the EPA regulations. The North Carolina General Assembly enacted legislation for the purpose of establishing an authorized State program that will “apply in this State in lieu of the corresponding federal program administered by the United States Environmental Protection Agency.”³ The North Carolina law went into effect January 1, 2010. Rules have been established by the Health Hazards Control Unit (“HHCU”) of the NC Department of Health and Human Services, Division of Public Health.⁴ The HHCU regulations contain detailed requirements for certification of individuals and firms and accreditation of training courses and training course providers. No person may perform

applicable lead-based paint renovation activities for compensation in target housing in the State of North Carolina until that person has been certified under the State Program. Under the HHCU regulations, lead-based paint renovation activities, records retention, information distribution, and reporting requirements related to lead-based paint renovation activities, are to be conducted in accordance with the EPA's regulations, which are briefly summarized below.

“Renovation” is defined in the EPA regulations as “the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces...” The term includes but is not limited to “...removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces.” “Renovation” activities could include remodeling and repair/maintenance, electrical work, plumbing, painting, carpentry and window replacement.

The EPA regulations do not apply: (1) where a written determination is made by a certified inspector or risk assessor that the components affected by the renovation are free of paint or other surface coatings containing lead in excess of prescribed levels; (2) a certified renovator, properly using an EPA-recognized test kit, has determined that each component affected by the renovation is free of paint or other surface coatings containing lead in excess of prescribed levels; (3) to minor repair and maintenance activities that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities, so long as certain prohibited work practices are not used and the work does not involve window replacement or demolition of painted surface areas; or (4) when the tenant performs a “do-it-yourself” renovation without compensation (an offset in rent presumably would constitute compensation).

In the case of emergency renovations, the EPA regulations are somewhat relaxed. “Emergency Renovations” are renovations resulting from a sudden, unexpected event that, if not attended to, present a safety or public health hazard or threatens equipment and/or property with significant damage. In such an event, the renovation may be performed by non-certified persons without having to comply with pre-renovation notification requirements or certain work practice standards. However, a certified renovation firm must

still perform the clean-up, including compliance with cleaning verification and record-keeping requirements.

No more than 60 days before beginning renovation activities in any residential dwelling unit, the firm performing the renovation must provide both the owner and an adult occupant of the property with the pamphlet “Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools” and obtain a written acknowledgment of receipt of the pamphlet or a certificate of mailing the pamphlet at least 7 days prior to the renovation (or, with respect to the occupant, a written certification from the renovator that the pamphlet was delivered and the renovator has been unsuccessful in obtaining a written acknowledgment). If the renovation activities are in a common area of multi-unit housing, the renovator must provide the owner with a copy of the pamphlet and obtain a written acknowledgment of receipt. With respect to notification of the tenants, the renovator must: (1) give written notice containing certain information to each affected unit and make the pamphlet available upon request; or (2) post signs containing certain information about the renovation, accompanied by a posted copy of the pamphlet or information on how occupants can review or obtain a copy of the pamphlet. The pamphlet may be photocopied for distribution as long as the text and graphics are readable.

Under the State Program, all covered renovations must be performed by State-certified renovation firms. All work must be directed by certified renovators and performed by individuals who are either certified renovators or have been trained by a certified renovator on the required work practices. All renovations, except those qualifying for one of the exceptions listed above, must be performed in accordance with work standard practices prescribed in the EPA regulations. The work standard practices set forth detailed requirements regarding protection of occupants (warning signs), containing the work area for interior and exterior renovations so that no dust or debris leaves the work area during the renovation, containing and removing waste from renovation activities, and cleaning the work area after the renovation has been completed. In addition, the regulations prohibit or restrict certain practices, such as open-flame burning or torching of lead-based paint, operating a heat gun on lead-based paint at temperatures at or above 1100 degrees Fahrenheit, and the use of machines that remove lead-based paint through high-speed operation such as sanding or sandblasting unless such machines are used with HEPA exhaust control.

Firms performing renovations must also retain and, if requested, make available all records necessary to demonstrate compliance with the regulations for 3 years following

completion of the renovation. According to the HHCU regulations, a certified renovation firm using EPA-recognized test kits must, prior to conducting renovation activities in target housing, provide in writing to the person who contracted for the renovation the identifying information as to the manufacturer and model of the test kits used, a description of the components that were tested including their locations, and the test kit results.⁵

Property management firms that perform “in-house” renovations on rental properties they manage are covered by these regulations. Such renovations are considered by the EPA to be compensated renovations based on the receipt of rent payments or salaries derived from rent payments and thus are covered. Penalties for non-compliance are potentially severe per-day per violations are up to \$32,000 by EPA and \$5,000 by the HHCU, and attorney and expert witness fees may be awarded. If an outside contractor is hired to perform a covered renovation, the owner or the property manager is not responsible under the new rules for the contractor’s compliance with the rules. However, there could be other bases for liability, such as negligence. Thus, it is important for managers to exercise reasonable diligence in hiring contractors to perform renovations covered under the rules, including confirmation that the firm and the renovator who will direct the renovation are currently certified.

The EPA publication “Small Entity Compliance Guide to Renovate Right” contains an excellent summary of the requirements of the EPA rules and is available at www.epa.gov/lead/pubs/renovation.htm. Information about various aspects of the State Program is available on the Health Hazards Control Unit’s web site at <https://epi.dph.ncdhhs.gov/lead/lhmp.html>.

REFERENCES

1. 15 U.S.C. 2682 and 2686
2. 40 CFR 745.80 through 745.91
3. [N.C.G.S. 130A-453.23through 130A-453.31](#)
4. 10A N.C.A.C 41C.0901 through .0907
5. 10A N.C.A.C 41.C.0907(b)

Part V: The Eviction Process

A. General Principles

A tenant may agree to vacate the premises at the landlord's request, but a landlord is prohibited from evicting a residential tenant in any manner except by judicial process.¹ This is true if the tenant has not paid the rent, or has violated another provision of the lease. Even criminal activity of the tenant does not allow the landlord to evict other than through court action. A landlord who does attempt to forcefully take possession is "subject to a suit in trespass and conversion for actual damages." A tenant wrongfully evicted can receive compensation for actual damages and can either terminate the lease or regain possession of the premises. Forcible eviction efforts by the landlord also could result in criminal prosecution and in a lawsuit for treble damages and payment of the tenant's lawyer fees.²

The Vacation Rental Act contains different procedures and time schedules permitting expedited evictions in vacation rentals of thirty days or less. However, if these procedures are utilized without a good faith belief that such action is permitted under the Vacation Rental Act, the landlord or property manager shall be guilty of an unfair trade practice and a Class 1 misdemeanor.³

One of the implied warranties in a lease is that of quiet enjoyment of the premises. If the landlord allows disturbing activities to the extent that a reasonable person would not remain in possession, the courts may say the acts of the landlord are the equivalent of eviction, and there has been a "constructive eviction." Since an unjustified eviction by the landlord is a breach of the lease contract, the tenant is entitled to terminate the lease without liability, and may be entitled to receive damages. Judges dealing with many cases over a long period of time recognize the potential for abuse if tenants can avoid their obligations too easily, and as a rule the tenant's burden of proof on this issue should be difficult.

A court proceeding should not be used if a simple request to vacate is sufficient. For that reason, the landlord is required to make a demand for possession before filing suit.⁴ A demand by the landlord is a communication to the tenant that the tenant has breached the lease contract, the lease has been terminated and the tenant must vacate the premises. No specific language is required, but the message must be clear.

The tenant can contract to waive the right to such a demand. If the lease agreement contains such a waiver, the time for filing is reduced from the ten days after demand provided for in the statutes to whatever the lease provides. This "demand" law was developed when most leases were not written. A written lease which provides the proper notice and states that

the tenant agrees to waive any additional notice and demand is recognized as valid by the courts.⁵

In summary ejectment cases and cases filed to collect past due rent, the property manager has legal standing to act for the landlord; specifically, the law provides that "the complaint may be signed by an agent, acting for the plaintiff, who has actual knowledge of the facts alleged in the complaint."⁶ This is a practical way of allowing routine processing of such cases by an agent, who can testify as a witness to matters of personal knowledge and business records without violating the principal that only licensed attorneys can act as advocates in court proceedings. Licensed property managers should sign and file complaints on behalf of their landlord clients only in cases involving summary ejectment and the collection of past due rent, and only when they have first-hand knowledge of the facts alleged in the complaint. In addition, it is recommended that they limit such activities to small claims court only. Although a party who appeals a magistrate's ruling to district court is not required to obtain legal representation, it is not entirely clear whether the term "party" as used in the relevant statute applies to a property manager or only to the owner whom the property manager represents.⁷

REFERENCES

1. [N.C.G.S. 42-25.6 et seq.](#)
2. [Stanley v. Moore](#), 339 N.C. 717, 454 S.E. 2d 225 (1995)
3. [N.C.G.S. 42A-23 through 27](#)
4. N.C.G.S. 42.26(a)
5. [Stanley v. Harvey](#), 90 N.C. App. 535, 369 S.E.2d 382 (1988)
6. N.C.G.S. 7A-223
7. [N.C.G.S. 7A-228\(e\)](#)

B: Eviction for Criminal Behavior

Landlords may evict a tenant, tenant's family member or a guest of the tenant on grounds of criminal activity.¹ The eviction proceeding can be brought in the Small Claims Court using the regular summary ejectment procedure, or it can be filed in the District Court, where it will be expedited (the District Court has authority to issue an injunction against criminal activity on the premises, which can be enforced by contempt of court proceedings). The law specifically allows the landlord's property manager to file this lawsuit. It can be filed before any criminal charges are brought against anyone, or if there is a verdict of not guilty.

The proof required of the landlord is one of five standards: (1) Criminal activity occurred in the rented property (serious criminal activity, which is a threat to the health, safety or peace of neighbors, and drug offenses greater than simple possession of a controlled substance); (2) The rented property was used in a way that promoted criminal activity; (3) The tenant or tenant family member or guest of tenant engaged in a criminal activity in or near the rented property; (4) The tenant allowed a person to be in the rented property after that person was prohibited from being there by court order; or (5) The tenant failed to immediately notify a law enforcement officer that a person was in the rented property who had been prohibited from being there by court order.

The tenant is given the right to remain if in the court proceeding the tenant proves by the greater weight of evidence certain things - essentially a lack of the knowledge a reasonable person would have about the criminal activity, or that something reasonable was done to correct the problem. The magistrate or judge hearing such a case has discretion to enter an order that takes into consideration the defendant's circumstances and attitude, and is to avoid an eviction order that would result in a serious injustice.

A "conditional eviction order" can be entered that prohibits a member of the tenant's household or a former guest from entering the rented property, with the result that if that order is violated the tenancy is ended. The landlord would then file a motion in the original case, rather than begin again, and ask the court to find that the tenant has permitted the barred person to be there, or has failed to notify law enforcement officers or the landlord that the person has returned. To obtain a conditional eviction order, the person affected must be a properly named defendant in the proceeding, or must be sufficiently described in a "John Doe" summons.

Landlords must be aware of this procedure, and must take action to prevent rental property from being used in the commission of crimes - particularly illegal drug activities. Government agencies are increasingly attempting to use forfeiture claims to seize property used in criminal activity, including rental housing. ²

REFERENCES

1. [N.C.G.S. 42-59 through -76](#)
2. [N.C.G.S. 19-6.1](#)

C. Time Schedule

The time table for the standard summary ejectment process takes into consideration that a security deposit may be required of a tenant, and this money is available to offset a one-month rent obligation. If the landlord begins the process of eviction, or "summary ejectment," at the earliest available time, the period in which no rent is received can be limited to approximately thirty days. The process begins when the landlord makes a "demand" of the tenant for surrender of the premises after the tenant "has done or omitted any act by which, according to the stipulations of the lease" must be done, and continues in possession without the permission of the landlord. Unless provided for in the written lease, this demand must be actually made, and the eviction process cannot begin until ten days have passed after the demand is made and the tenant has not paid within that time.¹

REFERENCES

1. [N.C.G.S. 42-3](#); [N.C.G.S. 42-26](#)

D. Complaint and Summons

The complaint is a formal document that describes the reason why the plaintiff is going to the court with a problem, what kind of action is requested, and whose rights are involved. The complaint must show the existence of the landlord-tenant relationship. The complaint must be brought in the correct legal name of the "real party in interest" (the person who has an actual and substantial interest in the subject matter, and not just someone with a nominal or technical interest). While the complaint must be in the name of the landlord, it may be signed by an agent who has first-hand knowledge of the facts alleged in the complaint.

The summary ejectment law provides that the landlord can recover up to \$10,000.00¹ for "rent in arrears, and damages for the occupation of the premises since the cessation of the estate of the lessee."² However, if the defendant does not appear at the hearing, there may be a challenge to the right of the landlord to obtain a judgment for money if there has not been a personal service (something other than posting) of the complaint. In any event, the landlord has the right to obtain possession if the property is posted after other methods of service have failed. See Part II, Section D.

Complaint forms for summary ejectment are provided by the State, and are available at the office of each county's clerk of court.

A summons is prepared and attached to the complaint by the clerk of court; it notifies the defendant that there will be a hearing before a magistrate at a specified location within seven days - excluding weekends and holidays - from the date the summons is issued.³

REFERENCES

1. [N.C.G.S. 7A-210](#)
2. [N.C.G.S. 42-28](#)
3. [N.C.G.S. 42-28](#)

E. Service of Process

The summons and attached complaint are taken to the county sheriff's office, and two copies are served on each tenant by a deputy. One is mailed by the sheriff no later than the next business day or "as soon as practicable" in a stamped envelope provided by the landlord. The sheriff's office may attempt to telephone the tenant to deliver the summons, but if no service results, must make at least one visit to the premises within five days after issuance of the summons but at least two days prior to the day that the defendant is required to appear to answer the complaint, excluding legal holidays, "at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service." If no one of suitable age and discretion is there, the officer "shall affix copies to some conspicuous part of the premises claimed and make due return showing compliance with this section."¹

REFERENCES

1. [N.C.G.S. 42-29](#)

F. Servicemembers Civil Relief Act Affidavit

The Servicemembers Civil Relief Act ("SCRA") is a federal law intended to protect military personnel on active duty, as well as Reservists and members of the National Guard when activated. ¹ The SCRA provides for the temporary suspension of civil judicial and administrative proceedings that may adversely affect the rights of servicemembers during their military service. The SCRA requires the plaintiff in every civil action where the defendant has not made an appearance in the case to file an affidavit declaring whether or not the defendant is in military service. The form is called the "Servicemembers Civil Relief Act Affidavit" (form AOC-G-250).

The best evidence of the tenant's status as to whether he or she is in military service is to obtain a "Status Report" on a Department of Defense website at <https://www.dmdc.osd.mil/appj/scra/scraHome.do>. By clicking on "Single Record Request" and inserting the tenant's name and social security number, the person making the request will get a "Status Report" certifying the tenant's active duty status as of the date of the request. A copy of the Status Report should be printed and attached it to the Affidavit.

If the tenant's social security number is not available, there is a place in the Affidavit for facts supporting the complainant's statement that the tenant is not in the military. Whether a magistrate will find the explanation sufficient will depend on the magistrate and the particular facts. It should be carefully noted that paragraph 5 on the back of the Affidavit form states that knowingly making a false statement made can result in fines or imprisonment for up to one year.

If the tenant is in military service and doesn't make an appearance in the case, the court may not enter judgment until after the court appoints an attorney to represent the servicemember. If the court determines that there may be a defense to the action that cannot be presented without the presence of the servicemember, or the appointed attorney can't contact the servicemember or otherwise determine if the servicemember has a defense to the action, the court must grant a stay of the proceedings for a minimum of 90 days.

If, based upon the affidavit, the magistrate is unable to determine whether the tenant is in military service, the magistrate may require the plaintiff to file a bond in an amount approved by the magistrate. If the defendant is later found to be in military service, the bond shall be available to indemnify the tenant against any loss or damage he or she may suffer by reason of any judgment for the plaintiff should the judgment be set aside in whole or in part.

The SCRA provides that a servicemember can waive his or her rights under the SCRA if the waiver is made during the period of his or her military service.² The NC REALTORS® has developed a waiver form that may be signed by a servicemember to waive his or her SCRA rights at the time he or she enters into a lease agreement. Assuming that the court determines that the waiver was knowingly and voluntarily signed by the servicemember during the period of his or her military service, the eviction action should go forward.

REFERENCES

1. 50 U.S.C. Section 3911 et seq
2. 50 U.S.C. Section 3918

G. The Magistrate's Hearing

The landlord must prove by appropriate evidence that the facts alleged in the complaint are true. Normally, this is done by testimony of the landlord's agent who has personal knowledge of the facts. First, the parties to the dispute are identified, and the breach of the lease contract is described (usually non-payment of rent). The lease may be offered as evidence of the fact that the tenant waived the right to a demand for surrender, or the agent may say how this notice was given. The magistrate should enter a judgment for possession if there is no defense. However, defenses may be raised for the first time at the hearing, and with no notice to the landlord.

H. Defenses and Counterclaims

A defense to a complaint, if proven, will prevent the plaintiff from winning. A counterclaim is a claim that money is owed to the claimant, and this can be more or less than the amount sought by the plaintiff. A 1987 decision of the North Carolina Court of Appeals gives a tenant the right to offset against the rent due the difference between the rental value of the premises as if in proper condition and the value as rented.¹ This "rent abatement" can lead to significant counterclaims in eviction actions.

REFERENCES

1. Miller v. C.W. Myers Trading Post, Inc., 85 N.C. App. 362, 355 S.E.2d 189 (1987)

1. Retaliatory Eviction

Retaliatory eviction is a statutory defense available to the tenant.¹ If a tenant proves that the landlord is trying to evict because the tenant engaged in one of several protected activities, the landlord will not be permitted to evict the tenant. Protected activities include complaining "in good faith and with reasonable cause" about a violation of a building code or a housing code, complaining about the landlord's failure to perform a duty imposed by statute or the lease, and participating in a tenant organization. If this defense is proved by the tenant, the summary ejectment action will be dismissed.² However, the landlord may still prevail in the summary ejectment action if the landlord proves the eviction effort was due to one or more reasons set forth in the statute, including a failure to pay rent, the tenant committed a material breach of the lease, or the premises will be uninhabitable for six months or more.³

REFERENCES

1. [N.C.G.S. 42-37.1\(a\)](#)
2. [Riverview Mobile Home Park v. Bradshaw](#), 119 N.C. App. 585, 459 S.E.2d 283 (1995)
3. [N.C.G.S. 42-37.1\(c\)](#)

2. Payment

If the tenant pays, or offers money to pay, the rent due and the filing and service of process costs at any time before the magistrate makes a decision, the lawsuit is terminated.¹ If the landlord continues the summary ejectment proceeding after payment or a valid attempt to pay, the landlord must pay the tenant's legal fees and any other costs. This statute is designed to protect a tenant, yet give a landlord the rent and the expenses incurred in filing suit. However, North Carolina appellate courts have stated that this statute has no application if the terms of the lease provide that the landlord can terminate the lease upon nonpayment of the rent. The N.C. Supreme Court has ruled that since the lease had a clause allowing the landlord to terminate the lease when the tenant failed to pay rent when due, the landlord could terminate the lease and get a judgment for possession even though the tenant offered to pay the rents due at the trial.² A decision of the N.C. Court of Appeals applied the same rule.³ Landlords receiving government rent assistance funds should be aware that retention of rent money for a tenant during the proceeding can affect the lawsuit.

Under State law, an offer to pay must be accompanied by "legal tender" - cash or equivalent. A personal check is not legal tender.

On the other hand, if the landlord accepts payment from the tenant before the magistrate makes a decision, it likely constitutes a waiver of the tenant's breach, and the summary ejectment proceeding should be dismissed. However, a recently-enacted law permits the landlord to accept a partial rent or housing subsidy payment without fear that it will waive the landlord's rights to evict the tenant through a summary ejectment action, whether it is filed before or after the acceptance of the partial rent or housing subsidy payment, provided that the lease includes language stating that the landlord's acceptance of partial rent does not waive the tenant's breach.⁴

REFERENCES

1. [N.C.G.S. 42-33](#)
2. Tucker v. Arrowood, 211 N.C. 118, 189 S.E. 180 (1937)
3. Charlotte Office Tower Associates v. Carolina SNS Corp., 89 N.C. App. 697, 366 S.E.2d 905 (1988)
4. [N.C.G.S. 42-26\(c\)](#)

3. Waiver

If the basis for a lawsuit on a contract is the failure of the defendant to pay when due, a successful defense is to prove that over a period of time the plaintiff failed to insist upon prompt payment. When this is proven, the court can dismiss the claim, saying there has been a waiver of the right to use it until notice is given that strict compliance in the future will be necessary.

I. Continuances

If either party in a summary ejectment action moves for a continuance, the magistrate may not continue the matter for more than five days or until the next session of small claims court, whichever is longer, unless the parties agree otherwise.¹

REFERENCES

1. [N.C.G.S. 7A-223\(b\)](#)

J. Appeal from the Decision

Upon hearing all the evidence from the plaintiff and the defendant, the magistrate will make a decision and enter a "judgment." The magistrate must render judgment in a summary ejectment action on the same day of the hearing, unless (i) the parties agree on an extension of time for entering the judgment, or (ii) it is a "complex summary ejectment case," defined as a case brought for criminal activity, breaches other than nonpayment of rent, evictions involving Section 8 or public housing tenants, or a case with a counterclaim. If the summary ejectment action is a "complex" case, the magistrate must render judgment within five business days of the hearing.¹

Either party, or both parties, may appeal from the judgment of the court. An appeal is effected by "giving notice in open court" - simply stating to the magistrate that an appeal is desired. The magistrate will note this on the record of the case. If an appeal is not made at this time, State law provides that it can be done within ten days of the decision date. The appealing party must also pay the costs of court to appeal. Failure to pay the court costs within 10 days after entry of the magistrate's judgment will result in an automatic dismissal of the appeal. Persons determined to be indigent may appeal without having to pay the court costs. If the petition to qualify as an indigent for the appeal is denied, the party has 5 additional days to pay the court costs.²

If the tenant loses, and appeals to District Court for a new trial, the landlord still can obtain possession by requesting the sheriff to execute the judgment. This requires the tenant who wants to stay in possession during the appeal to take certain action at the office of the clerk of court. The tenant must pay to the clerk of superior court any rent in arrears as determined by the magistrate and sign an "undertaking" agreement (a rent bond) to pay the rent, as it becomes due, to the clerk of court.³ Money paid can be obtained from the clerk by the landlord. If rent is not paid within five days after due, the clerk upon application by the landlord, will issue an order directing the sheriff to enforce the landlord's right to possession.

Indigent persons are not required to pay rent in arrears, but are required to pay the amount of the contract rent as it becomes periodically due.

Assuming the tenant properly appeals the magistrate's decision, the landlord may file a motion to dismiss the appeal based on the defendant's failure to: (1) raise a defense in the small claims hearing, whether orally or in writing, (2) file a motion, answer, or counterclaim in the district court, or (3) make any payment due under any applicable bond to stay execution of the judgment for possession. If the tenant, within 10 days of receipt of the motion to dismiss, fails to either file a responsive motion, answer, or counterclaim and serve the landlord with a copy, or pay the amount due under the bond to stay execution, the court may dismiss the appeal without a hearing.⁴

If the tenant loses in District Court, he or she may stay execution of the judgment during the 30-day time period for taking an appeal to the Court of Appeals by continuing to make his or her rent payments. If the tenant appeals to the Court of Appeals and, during the appeal, fails to make rent payments within 5 days of the day rent is due under the lease, a writ of possession may be obtained by the landlord from the clerk of court and executed immediately by sheriff.⁵

REFERENCES

1. [N.C.G.S. 7A-222\(b\)](#)
2. [N.C.G.S. 7A-228\(b\)](#)
3. N.C.G.S. 42-34; Fairchild Properties v. Hall, 122 N.C. App. 286, 468 S.E.2d 605 (1996)
4. [N.C.G.S. 7A-228\(d\)](#)
5. [N.C.G.S. 42-34.1\(a\)](#)

K. Execution on the Judgment

Having a judgment gives you certain legal rights, which may be difficult to enforce. The law provides that the sheriff will assist a judgment holder in an effort to carry out the order of the judge. However, a judgment cannot be effected or "executed" during the time allowed for filing an appeal from the judgment. Consequently, a judgment for possession is not "executable" until ten days have passed from the magistrate's decision awarding possession and a failure by the tenant to perfect an appeal during that time.

When the time for execution of the judgment arrives, the landlord applies to the sheriff for assistance by getting an order from the clerk of court. The "writ of possession" order directs the sheriff to "execute" by removing the tenant from possession.

There can be no execution on a "stale judgment" (one entered more than thirty days earlier) unless the landlord signs an affidavit stating that the landlord has neither entered into a lease with the tenant nor accepted money from the tenant after the judgment was entered.¹ This law prevents a landlord from obtaining a judgment for possession, taking the tenant's rent money afterward, and later using the same judgment order to evict the tenant without going through the entire court process again (and with a much shortened time for the tenant to be evicted with the assistance of the sheriff).

REFERENCES

1. [N.C.G.S. 42-36.1A](#)

L. The Sheriff's Assistance

In each county the law enforcement officer responsible for carrying out the directions of a court order is the sheriff. This elected official is bonded, and can be sued for failure to perform legal duties. Normally, the work of the office is carried out by deputies, who work under the supervision and policies of the sheriff. Statewide law controls the eviction process, so there is little discretion in how the sheriff's office will perform this task.

The statutory procedure regulates two activities: one is the removal of the tenant personally (each tenant included in the court order if more than one has contract rights to possession under the terms of the lease); and the other is the removal of the tenant's personal property.

A tenant who resists an eviction ordered by the court will be physically removed, if necessary, by the sheriff. This government agency service averts the likelihood of personal confrontations between the landlord and tenant, and thereby helps provide a more peaceful community.

Personal property removal is a complex issue. The statutory law considers individual property rights and practical remedies. The landlord has choices and responsibilities. While the law requires the tenant to remove all personal property, in many instances this is not done. There may be no tenant present when the sheriff comes to carry out the possession order.

Advance notice is given to the tenant that there will be an enforcement of the court's possession order.¹ The sheriff's notice can be delivered by either of these methods: (1) personal delivery to the tenant or a person "of suitable age and discretion" at the tenant's residence at least two days before the eviction time; or (2) mailing to the tenant (in a stamped envelope provided by the landlord) at the tenant's "last known address" at least five days before the

eviction time. The eviction date and hour is determined by the sheriff, but must be no later than seven days after the sheriff receives the order.

Abandoned property is discussed also in Part IV, Section F, "Abandoned Personal Property." But, whether personal property has been abandoned as a matter of law may be difficult to determine. Items that appear to be worthless often have monetary and sentimental value.

The landlord must make a determination of the monetary value of the abandoned property. This can be done with the assistance of an "unrelated" person in the used furniture/used clothing business - or with a charity that sells donated items. For added protection, a videotape or photographs of the premises at the time of the sheriff's execution can help establish values and a record of the items later disposed of by the landlord. (The cost of a video camera is likely to be significantly less than the cost of defending one lawsuit.)

When the sheriff arrives to help the landlord gain possession, and personal property of the tenant remains, the landlord has two choices. The sheriff will supervise removal to a storage warehouse, at the landlord's expense. Or, the sheriff will "padlock" the premises when the landlord "signs a statement saying that the tenant's property can remain on the premises."

If the tenant's property is taken to a warehouse, the sheriff may require the landlord to advance the costs of delivering the property and one month's storage charge. These costs, along with costs of the summary ejectment proceeding, become a lien against the tenant's property. If the warehouse later sells the property to satisfy its lien, the proceeds will be applied to the landlord's lien.

REFERENCES

1. [N.C.G.S. 42-36.2](#)

Part VI: Discrimination

A. Fair Housing Acts

Federal and state laws prohibit certain types of discrimination in housing. The Federal Fair Housing Act was originally enacted in 1968; it was supplemented by Congress in 1988 to add two additional major areas of protection - familial status and handicap - becoming effective March 12, 1989.¹ The North Carolina Fair Housing Act, enacted in 1983, also was amended in 1989 to add familial status and handicap as protected classes.² It is now illegal under both federal and state law to discriminate against an individual based on race, color, religion, sex, national origin, handicap or familial status in the sale, rental or advertising of residential property. The North Carolina Fair Housing Act is in substantial conformity with the federal Fair Housing Act. Violations of the Federal Fair Housing Act are probably violations of the State Fair Housing Act, and vice versa. The Acts do not apply to the sale or rental of commercial property.

In addition, the Code of Ethics of the National Association of REALTORS® makes it unethical for REALTORS® to discriminate on the basis of sexual orientation or gender identity.³

A violation of the State Fair Housing Act by a real estate agent is also a violation of the real estate licensing law. According to the rules of the NC Real Estate Commission, “[c]onduct by a licensee which violates the provisions of the State Fair Housing Act constitute improper conduct in violation of G.S. 93A-6(a)(10).”⁴

REFERENCES

1. 42 U.S.C. 3601 et. seq.
2. [N.C.G.S. 41A-1 et. seq.](#)
3. Article 10, Code of Ethics and Standards of Practice of the National Association of REALTORS®
4. 21 N.C.A.C. 58A.1601

B. Exemptions

There are several statutory exceptions to the Federal Fair Housing Act. Limitations on familial status discrimination do not apply with respect to certain categories of “housing for older persons.” The Federal Act also does not apply to the sale or rental of a single-family dwelling by the owner under certain circumstances; the rental of owner-occupied dwellings in

which not more than four families live; religious organizations which give preference to members of the same religion in a real estate transaction, as long as membership in such religion is not restricted by race, color or national origin; or private clubs not open to the public which give preference to members in a real estate transaction. It should be noted that these exemptions apply only to the application of the Federal Fair Housing Act. A party may have a cause of action under some other civil rights law, such as the Civil Rights Act of 1866, which does not contain such exemptions.

The State Fair Housing Act contains similar exemptions. However, unlike the “single-family dwelling” exemption in the Federal Act, the State Act only exempts the rental of a room or rooms in a private house, not a boarding house, if the owner or a member of his family resides in the house. In addition, the North Carolina Act exempts the rental of rooms in single-sex dormitories.

C. Prohibited Conduct--General

A landlord may not discriminate against a prospective tenant or a tenant who is within one of the protected categories. It is unlawful to offer to list property, or to list it with the understanding that discrimination may occur in the leasing process. It is unlawful to represent that property is not available for inspection or lease when any part of the motivation is discrimination. It is unlawful to refuse to negotiate with any person - owner, property manager, prospective tenant or existing tenant - when any part of the motivation is discrimination. There can be no discrimination in terms, conditions, privileges, facilities or services. It is essential that all applicants and tenants be treated alike if you wish to avoid discrimination claims.

Most of the litigation and the rules that have developed in the fair housing area arose from racial discrimination. Some cases are based upon obvious acts of discrimination, with fact situations that will give obvious results. Other cases involve facts that do not show blatant discrimination but concern landlord rules or practices that prove to have the effect of discriminating against a class of persons. If an act, or a failure to act, has the effect of discrimination, it will be a violation of the Fair Housing Act even though there is no expressed or unexpressed intent to discriminate. An example of an act that has the effect of discrimination is the establishment of a construction policy that all units will have eight stair steps, whether needed or not. It might be easily proved that this has the effect of discrimination against persons in wheelchairs. The only defense to a charge that an act or

inaction had the effect of discrimination is proof that motivation was some "business necessity" and that the business incentive "justifies" what was done or not done.

Any rules of a landlord should be reviewed by someone trained in this area of the law, and every rule should be supported by business-related reasons that can withstand a challenge on the grounds that a discriminatory effect exists -even if no discriminatory action was intended. Uniformity in application of the rules is essential to avoiding a discrimination claim.

D. Discrimination in Advertising

The fair housing laws prohibit any advertising with respect to the rental of a residential dwelling which indicates directly or indirectly any preference, limitation, or discrimination because of race, color, religion, sex, national origin, handicapping condition, or familiar status.

E. Discrimination Based on Familial Status

The familial status protection was aimed at discrimination against families with children, with Congress reacting to stories about the lack of available housing for this group. The basic rule is that there can be no discrimination against any family because one or more members of the family is under the age of eighteen. The law makes an exception for group housing for "the elderly." Qualification for the housing for the elderly exception is based upon having a facility with significant facilities and services designed to benefit physical and social needs of the elderly. Tenant units must be either (1) one hundred percent occupied by someone 62 or older; (2) eighty percent occupied by someone 55 or older; or (3) fall within one of the exceptions for subsidized housing for the elderly.

There is no requirement that any housing be designed or re-designed to include facilities for children. However, the potential danger of existing conditions (such as high balconies) may not be used as an excuse for not renting to families with children or segregating families with children within a development. In a comment on the implementing regulations, the Secretary of HUD said: "The Department does not believe that, in enacting the Fair Housing Amendments Act, the Congress sought to limit the ability of landlords or other property managers to develop and implement reasonable rules and regulations relating to the use of facilities associated with dwellings for the health and safety of persons. However, there is no support for concluding that it is permissible to exclude handicapped persons or families with children from dwellings on upper floors of a high-rise, based on the assertion that such dwellings per se present a health or safety risk to such persons."

The Federal and State Acts do not limit “the applicability of any reasonable local or State restrictions regarding the maximum number of occupants permitted to occupy a dwelling unit.” Although as a general rule of thumb, two persons per bedroom will be considered a reasonable limitation, HUD has declined to specify any maximum occupancy in a dwelling unit. In determining whether an occupancy limit is reasonable, HUD will take into account all relevant factors, including the size of the bedroom, ages of the occupants, configuration of the apartment, and applicable state and local laws.

F. Discrimination Based on Handicap

Department of Housing and Urban Development (HUD) regulations define a “handicap” to mean a “physical or mental impairment which substantially limits one or more major life activities.” A landlord is not required to rent to someone who is a current, illegal user of drugs (a "controlled substance"). Federal regulations permit asking a prospective tenant to state whether the applicant "is a current illegal abuser of or addict to a controlled substance" or "has been convicted of the illegal manufacture or distribution of a controlled substance."

A housing provider may not ask if a prospective tenant has a handicap - unless there are a limited number of units having greater accessibility for physically handicapped persons, and the inquiry is made to qualify the person for priority as to those units. Only the questions necessary for qualification may be asked, however.

The law recognizes that mental handicaps may cause behavior that permits discrimination against an individual who has such a problem. Denial of housing can be done when the individual's residency would threaten the health or safety of others or would result in substantial physical damage to property. The following statute, enacted as part of the Mental Health, Developmental Disabilities, and Substance Abuse Act, gives guidance as to whether an individual constitutes a threat to others:

"Dangerous to others" means that within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Clear, cogent and convincing evidence that an individual has committed a homicide in the relevant past is prima facie evidence of dangerousness to others.¹

In commenting upon whether Congress intended the term "handicapped" to apply to alcoholics, the Secretary of HUD said: "In other words, while an alcoholic may not be rejected by a housing provider because of his or her alcoholism, the behavioral manifestations of the condition may be taken into consideration in determining whether or not he or she is qualified. Thus, a housing provider may judge handicapped persons on the same basis it judges all other applicants, including handicapped applicants, such concerns as past rental history, violations of rules and laws, a history of disruptive, abusive, or dangerous behavior." It is now clear that a person with the Human Immunodeficiency Virus ("HIV" or "AIDS virus") is covered by the Act.

The Federal and State Fair Housing Acts provide that a handicapped person, at his or her expense, must be allowed to make "reasonable" modifications necessary for that person to have the "full enjoyment of the premises." Where reasonable to do so, the landlord may condition permission for modifications on agreement by the tenant to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. However, where any such modifications will not interfere with the landlord's or future tenants' use of the premises, the handicapped tenant does not have to restore the premises to their original condition. HUD takes the position that restoration expenses only apply to the individual dwelling unit, and modifications to public access areas are there to benefit other persons with disabilities.

A landlord may not increase the security deposit of a handicapped person but can require a tenant to pay funds into an interest-bearing trust account to cover the costs of restoration. The interest must accrue to the benefit of the tenant. A landlord may not routinely require such deposits; "the landlord must make a case-by-case determination based upon such factors as the extent and nature of the proposed modifications, the expected duration of the lease, the credit and tenancy history of the individual tenant, and other information that may bear on the risk to the landlord that the premises will not be restored."

Accommodation of tenants with disabilities includes complying with reasonable requests for preferential treatment, and modifying rules and standard practices. Examples include favorable parking spaces, priority for vacant units that are most accessible, and recognition that nurses and other assistants may need special consideration.

The law also imposes requirements on the design and construction of multi-family dwellings occupied after March 13, 1991. Covered multi-family dwellings must be designed and constructed in a manner that makes common and public areas readily accessible by handicapped persons.

REFERENCES

1. [N.C.G.S. 122C-3\(11\)](#)

1. **“Service Animals” and “Assistance Animals”**

The Federal Fair Housing Act and HUD regulations prohibiting discrimination because of disability require housing providers to make reasonable accommodation for persons with disabilities to use “assistance animals” in housing.² While dogs are the most common type of assistance animal, other animals can also be assistance animals. The Fair Housing Act does not require assistance animals to be individually trained or certified. A person with a disability may not be required to pay a pet fee or deposit for an assistance animal, but may be required to pay the costs of repairs for damage the animal causes to the premises.

After receiving a request from a person with a disability for a reasonable accommodation to possess an assistance animal in a dwelling, the housing provider must consider whether the animal works, provides assistance, performs tasks or services for the benefit of the person with the disability, or provides emotional support that alleviates one or more of the identified symptoms or effects of a person’s existing disability. If the answer is “yes,” the housing provider must modify or provide an exception to a “no pets” policy to permit the person to live with and use an assistance animal in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider’s services. The request may also be denied if the specific animal poses a direct threat to the health or safety of others that cannot be eliminated, or the specific animal would cause substantial physical damage to the property of others that cannot be reduced or eliminated. Such a determination must be based on objective evidence about the specific animal’s actual conduct.

On January 28, 2020, the US Department of Housing and Urban Development issued a 19-page “Notice” containing useful guidance on assessing a person’s request to have an assistance animal. It replaced prior guidance on the subject issued by HUD in 2013. The Notice does not contain any new rules on the subject of assistance animals that expand or alter housing providers’ obligations under the fair housing laws or regulations; rather, it was issued as a guidance document to both housing providers and individuals seeking an accommodation for an assistance animal.²

Under NC law, a person with a disability has the right to be accompanied by a “service animal” to assist the person with his or her specific disability on any premises the person leases, rents or uses. The person qualifies for this right upon the showing of a tag issued by the NC Department of Health and Human Services (DHHS) or upon a showing that the animal is being trained or has been trained as a service animal.³ Although the law provides that the DHHS shall adopt rules for the registration of service animals, no such rules have been adopted. The term “service animal” is not defined, nor does there appear to be any guidance on the circumstances, if any, under which a request to be accompanied by a service animal may be denied.

To the extent that the NC law on “service animals” is more restrictive than the Federal law pertaining to “assistance animals,” landlords would be required to follow the Federal law. For example, although NC law permits a landlord to require a prospective or existing tenant to show “that the animal is being trained or has been trained as a service animal,” since the Fair Housing Act does not require an assistance animal to be individually trained or certified, such a requirement may not be imposed. On the other hand, given the lack of guidance under NC law as to the circumstances under which a request for a service or assistance animal may be denied, it would seem reasonable for a landlord to be guided by the Federal law in making such a determination.

REFERENCES

1. 42 U.S.C. 3604(f)(3)(B); 24 C.F.R. 100.204
2. Notice FHEO-2020-01, U.S. Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity (January 28, 2020)
3. [N.C.G.S. 168-4.2 through 4.5](#)

G. Improper use of criminal background checks

HUD has issued guidance (the “HUD Guidance”) on how the Fair Housing Act (the “Act”) applies to the use of criminal history by providers of housing.¹ According to the HUD Guidance, “[a]cross the United States, African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population.” Therefore, “criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers... [C]riminal history-based restrictions on housing opportunities violate the Act if, without justification, their burden falls more often on renters... of one race or national origin over another.”

The fair housing laws can be violated even where there is no intent to discriminate. This is known as “disparate impact” or “discriminatory effects” liability. A housing provider violates the fair housing laws where the provider’s policy has an unjustified discriminatory effect on a protected class, even where the provider has no intent to discriminate. According to the HUD Guidance, determining “discriminatory effects liability” involves a 3-step analysis. Part III of the HUD Guidance describes the 3-step process. In the first step, the plaintiff must prove that the housing provider’s criminal records policy results in a disparate impact on a group of persons because of their protected class status.

The HUD Guidance suggests that a plaintiff could present statistical evidence to prove that a criminal history policy actually or predictably results in a disparate impact on a group of persons because of their protected class status. According to the HUD Guidance, national statistics showing that racial and ethnic minorities face disproportionately high rates of arrest and incarceration “...provide grounds for HUD to investigate complaints challenging criminal history policies.”

In the second step, the burden shifts to the housing provider to prove that the challenged policy is justified. The provider must show that the policy is necessary to “achieve a substantial, legitimate, nondiscriminatory interest of the provider.” The HUD Guidance focuses on the protection of other residents and their property as a reason commonly used by landlords to support a criminal history policy. The HUD Guidance acknowledges that ensuring resident safety and protecting property may be considered substantial and legitimate interests, but states that a housing provider must be able to prove that its policy of making housing decisions based on criminal history actually assists in supporting these interests. The HUD Guidance makes it very clear that a policy of making housing decisions based on *arrests*, as opposed to *convictions*, will not be considered sufficient. According to the HUD Guidance, “the fact of an arrest is not a reliable basis upon which to assess the potential risk to resident safety or property posed by a particular individual.” Therefore, the consideration of an arrest of any kind should be stricken from any criminal records policy.

Regarding convictions, a blanket prohibition on any person with any criminal conviction without regard to what the conviction was for, the age of the conviction, or what the convicted person has done since the conviction, will not be sufficient. A provider must show that its criminal records policy “accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that

does not.” According to the HUD Guidance, “a policy or practice that fails to consider the nature, severity, and recency of criminal conduct is unlikely to be proven necessary to serve a ‘substantial, legitimate, nondiscriminatory interest’ of the provider.”

This is where the third step of the analysis comes in. At this point in the analysis, if the housing provider proves that its criminal records policy is legitimate, the burden shifts back to the plaintiff or HUD to prove that the housing provider’s legitimate interest could be served by another practice that has a less discriminatory effect. Section III.C. of the HUD Guidance suggests that a housing provider employ an “individualized assessment” in reviewing an individual’s criminal record because it “is likely to have a less discriminatory effect than categorical exclusions that do not take such additional information into account.” Examples given by HUD of additional information that could be taken into account are: the facts or circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; evidence that the individual has maintained a good tenant history before and/or after the conviction; and evidence of rehabilitation efforts.

The HUD Guidance notes that the Federal Fair Housing Act specifically does not prohibit conduct against a person because he or she has been convicted of the illegal manufacture or distribution of a controlled substance as defined in the Controlled Substances Act. Thus, a housing provider will not be liable under the Act for refusing to rent to a person based on a policy against renting to persons convicted of manufacturing or distributing a controlled substance, regardless of any discriminatory effect that may result from such a policy. Note carefully that this exemption does not provide a defense to a claim based on drug-related crimes other than manufacturing or distributing, such as drug possession.

REFERENCES

1. Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing Real Estate-Related Transactions, U.S. Department of Housing and Urban Development (April 4, 2016).

H. Discrimination Against Persons with Limited English Proficiency.

HUD has also issued guidance (the “HUD Guidance”) discussing how the Fair Housing Act (“FHA”) applies to a housing provider’s consideration of a person’s limited ability to read, write, speak or understand English.¹ Although persons with limited English proficiency (“LEP”) are not a protected class under the FHA, according to the HUD Guidance, the FHA prohibits housing providers from using LEP in a way that causes an

unjustified discriminatory effect. According to the HUD Guidance, “[n]early all LEP persons are LEP because either they or their family members are from non-English speaking countries...Thus, housing decisions that are based on LEP generally relate to race or national origin...Courts have found a nexus between language requirements and national origin discrimination.”

As with improper use of criminal background checks, a housing provider who has no intent to discriminate can violate the FHA if the provider’s policy or practice has a so-called “unjustified discriminatory effect” on persons with LEP. Discriminatory effects liability based on LEP would be determined using the same three-step process described in Part IV, Section G. above. In the first step, the complaining party must prove that the housing provider’s policy or practice concerning LEP people results in a disparate impact on a group of persons because of the group’s national origin, race or other protected characteristic. This step may be satisfied through the use of census data proving that an LEP-related policy has a disparate impact based on race, national origin or other protected characteristic.

If the complaining party proves that the policy concerning LEP people has a “disparate impact,” in the second step of a discriminatory-effects analysis, the burden shifts to the housing provider to prove that the challenged policy is necessary to achieve a substantial, legitimate, non-discriminatory interest of the provider. According to the HUD Guidance, “English proficiency is [not] likely necessary in the landlord-tenant context where communications are not particularly complex or frequent or where, for example, a landlord employs a management company with multilingual staff or otherwise can access language assistance.”

If the housing provider successfully proves that its language-related policy is necessary to achieve a legitimate interest, the burden shifts back to the complainant to prove that the housing provider’s legitimate interest could be served by another practice that has a less discriminatory effect. Examples listed in the HUD Guidance include allowing a tenant a reasonable amount of time to take a document, such as a lease, to be translated, obtaining written or oral translation services, drawing upon the language skills of staff members, and agreeing to communicate through a family member or other person who a prospective tenant brings along.

REFERENCES

1. Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency, U.S. Department of Housing and Urban Development (September 15, 2016).

I. Americans with Disabilities Act

The Americans with Disabilities Act (“ADA”) was enacted by Congress to protect the civil rights of persons with mental or physical disabilities.¹ The ADA does NOT affect the sale or rental of residential housing. However, under the ADA most “commercial facilities” and “places of public accommodation” must comply with certain specifications to assure adequate access for persons with disabilities. Real estate agents involved in leasing or managing such facilities for others have a legal obligation under the ADA to disclose any noncompliance of the property with the ADA to all parties to the transaction when the agent knows or reasonably should know of the noncompliance. Under the ADA, a “person with a disability” is an individual who has a physical or mental impairment that substantially limits one or more of his/her major life activities.

REFERENCES

1. 42 U.S.C. 1201 et. seq.

J. HUD/State Enforcement

A housing discrimination complaint can be filed with HUD or with the North Carolina Human Relations Commission. If a complaint is filed with HUD, it must be referred to the Human Relations Commission because the North Carolina Fair Housing Act has been determined to be substantially equivalent with the Federal Act. When a local government has an equivalent ordinance and local agency to handle complaints, enforcement will be at that level. Several communities have enacted ordinances to create fair housing laws and enforcement agencies. Governmental enforcement agencies have the authority to go to court and represent individuals who allege discrimination, and to petition the court for an order restraining a rental of property pending resolution of the discrimination charges. However, the enforcement agency is charged with the responsibility to first try to mediate and resolve any case where discrimination is alleged.

"Testing" is one method used by enforcement agencies and advocacy organizations. Two applicants will seek housing from a person suspected of discrimination practices. One

will be from a group protected, and the other will not. Each will have the same characteristics as to income, family composition, etc. The tester might be a stranger to the area, or might be a local resident who has volunteered for the role. Testers are usually members of anti-discrimination groups. In every case, what is being tested is the possibility of discriminatory practices. Every employee of a landlord must be aware of the use of this enforcement practice. While it has been used primarily with respect to applicants for housing, it can be used to test practices that might be used to terminate leases.

If a landlord is notified that a complaint has been filed, there is an immediate need for consultation with a lawyer familiar with the fair housing law. There should be no unguarded communication with the complaining person. Anything you say may be used against you. And, the penalties for violation of the law are great. The Federal law provides for monetary damages to the person discriminated against; a civil penalty up to \$50,000 for the first violation; and payment of the other party's lawyer.

Part VII: Government Relations

A. The Real Estate Commission - Licensing and Regulation

The state of North Carolina requires those who engage in certain occupations to be licensed. No license is required to be a landlord, or to be the regular employee of a corporation, limited liability company or partnership renting and/or managing its own property. However, any person who is in the business of managing real property for others must be licensed by the North Carolina Real Estate Commission before engaging in that occupation.¹

One notable exception to the license requirement is for certain employees of a licensed property manager who are limited to exhibiting units of the real estate to prospective tenants; providing the prospective tenants with information about the lease of the units; accepting applications for lease of the units; completing and executing preprinted form leases; and accepting security deposits and rental payments for the units only when the deposits and rental payments are made payable to the owner or the property manager employed by the owner.² However, the Commission takes the position that neither a broker nor the broker's licensed or unlicensed employees may collect security deposits or rental payments made payable to the owner and deposit them directly into an owner's bank account.

The Commission regulates many of the activities of property managers, and has the authority to discipline and to revoke licenses. Every licensee should be familiar with the regulations adopted by the Commission; violation of them can result in temporary or permanent revocation of a license to be in this occupation.

Property managers who are licensed by the State of North Carolina must comply with the North Carolina law relating to trust accounts and trust account funds.³ A deposit that is to be refunded to the tenant if not needed to cover the tenant's obligations is money held in trust. It cannot be "commingled" with monies belonging to the property manager. While money held in trust for several owners or several tenants may be placed in one bank account, money may not be taken from that account for the benefit for one person in an amount greater than that person has available for distribution from that account. For example, if a property manager has \$1,000 in a trust account for each of three owners, \$1050 may not be taken from the \$3,000 fund to pay for roof repairs for just one of the three. Detailed records must be kept of all trust account money. The Real Estate Commission may audit the records of its licensees at any time, and failure to comply with the law can result in suspension or revocation of the license.⁴ A willful violation of the licensing law is a misdemeanor.⁵

REFERENCES

1. [N.C.G.S. 93A-2](#)
2. [N.C.G.S. 93A-2\(c\)\(6\)](#)
3. N.C.G.S. 93A-6(a)(12); 21 N.C.A.C. 58A.0107; also see Real Estate Commission's "Trust Account Guidelines"
4. [N.C.G.S. 93A-6\(d\)](#)
5. [N.C.G.S. 93A-8](#)

B. Attorney General's Office

North Carolina has laws prohibiting "unfair and deceptive" business practices and unfair debt collection practices.¹ The Attorney General has authority to investigate and to initiate court proceedings when the public interest justifies such State action against an individual business operator. These laws also are enforced by civil suits in which one private citizen sues another.²

REFERENCES

1. [N.C.G.S. 75-1.1 et seq.](#)
2. [Love v. Pressley](#), 34 N.C. App. 503, 239 S.E. 2d 574 (1977); [Cotton v. Stanley](#), 86 N.C. App. 534, 358 S.E. 2d 692 (1987)

C. Local Government

1. City and county permitting/registration programs.

A city or county may under certain circumstances require an owner or manager of residential property to obtain a permit to rent the property or register the rental property with the city or county.¹ An individual rental unit must have more than four "verified violations" of housing ordinances or codes in a rolling 12-month period or two or more such violations in a rolling 30-day period, or if the property has been identified within the top ten percent (10%) of properties with crime or disorder problems. A violation cannot count as a "verified violation" if the owner or manager has corrected the violation within 21 days of written notice from the city or county of the violations, unless the same violation occurs more than twice in a 12-month period. The fee or tax on any such property cannot exceed \$500 in any 12-month period.

If a property is identified as being in the top ten percent (10%) of properties with crime or disorder problems, the city or county must notify the landlord of any crimes,

disorders or other violations that will be counted against the property to allow the landlord an opportunity to correct the problems. In addition, the police or sheriff's department must assist the landlord in addressing any criminal activity, including testifying in court in a summary ejectment action. If the police or sheriff's department does not cooperate in evicting a tenant, the tenant's behavior or activity at issue may not be counted as a crime or disorder problem, and the property may not be included in the top ten percent of properties as a result of the tenant's behavior or activity.

A city or county may not require an owner or manager of rental property to submit to an inspection before receiving utility service provided by the city or county, and may not provide that violation of a rental registration ordinance is punishable as a criminal offense.

2. "Blighting"

A city or county may require periodic inspections to respond to blighted or potentially blighted conditions within a geographical area designated by the city council or county commissioners, provided that the size of a "blighted" area that may be designated at any one time by a city or county is limited to no more than one square mile or five percent (5%) of the area within the city or county.²

3. Periodic inspections.

Unless the property is in a designated "blighted" area, a city or county may make periodic inspections of a residential building or structure only where there is "reasonable cause" to believe that "unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist" in such a building or structure.³ A "reasonable cause" determination is triggered by the existence of four "verified violations" within a rolling 12-month period. If the city or county inspection department determines that a safety hazard exists in one dwelling unit in a multifamily building which the inspector thinks "poses an immediate threat to the occupant," the department may inspect other units in the building without a specific complaint and actual knowledge of the unsafe condition to determine whether that same safety hazard exists.

4. Rent Control

A county or city may not "enact, maintain, or enforce any ordinance or resolution" which regulates the amount of rent to be charged for privately owned, single-family or multiple unit residential or commercial rental property.¹ However, this limitation does not prohibit cities or counties from regulating property belonging to the city, county, or authority, entering into agreements with private persons which regulate the amount of rent

charged for subsidized rental properties; or enacting ordinances or resolutions restricting rent for properties assisted with Community Development Block Grant Funds.

REFERENCES

1. [N.C.G.S. 153A-364\(c\); 160A-424\(c\)](#)
2. [N.C.G.S. 153A-364\(b\); 160A-424\(b\)](#)
3. [N.C.G.S. 153A-364\(a\); 160A-424\(a\)](#)
4. [N.C.G.S. 42-14.1](#)

D. State Treasurer's Office

Property held by one person and owned by another legally belongs to the owner, and if the holder does not return it, the State can claim it. In North Carolina, property managers are legally required to handle uncashed checks in accordance with what is known as the North Carolina Unclaimed Property Law.¹ That law requires all companies operating in the State to examine their accounting records each year to determine whether they are in possession of "dormant unclaimed property". If they are, they are required to file a "Holder Report" with the Unclaimed Property Division of the State Treasurer's office, and to remit any unclaimed funds to the Department of the State Treasurer. This process is known as "Escheat."

How does a property manager know if "dormant unclaimed property" is being held? According to the statute, property is "unclaimed" if the apparent owner has not communicated with the holder concerning the property, or otherwise indicated an interest in the property. Dormancy periods vary for various types of property. For "general" (not certified) checks, the proceeds are presumed abandoned after five years if they remain unclaimed. That five-year period is the maximum period during which the monies must be held. However, a property manager who holds the proceeds of an uncashed check for two years with no contact from the owner of those funds may complete the necessary paperwork and escheat the funds to the State Treasurer.

Before a property manager may send any unclaimed funds to the State Treasurer, the Unclaimed Property Act requires that he or she make a good faith effort to locate the owner of the funds.² If the unclaimed check is for more than \$50.00, the "holder" must send a written notice by first-class mail to the last known address of the owner. The notice must state that the sender is holding funds to which the addressee appears entitled. The notice must also inform the addressee that a claim must be presented by the following October 1 or the monies will be placed in the custody of the Treasurer. The notice must be sent not more

than 120 days or less than 60 days before filing what is known as the "Holder Report." Technically, a holder does not have to make a good faith effort to reach the owner if the property is valued at less than \$50.00. However, the Unclaimed Property Division encourages holders to alert the owners of unclaimed property no matter the amount in order to help maintain good customer relations. Therefore, using due diligence to locate the owners of unclaimed property under \$50.00 is not statutorily required, but is encouraged.

The Holder Report must be filed before November 1 of each year and must cover the 12 months preceding July 1 of that year. The State Treasurer's office has created forms to use along with a sample notice to owner, all of which can be found by going to the State Treasurer's website at www.treasurer.state.nc.us and then going to the link titled "Divisions" and clicking on the link for Unclaimed Property. Also available on that site is a "Holder Reporting Guide" that describes the reporting process in greater detail.

In summary, a property management firm needs to establish a process for (1) examining its trust account records each year to identify if any dormant unclaimed funds are being held; (2) making a good-faith effort to locate the owners of such funds; (3) sending notices to the owners of any dormant unclaimed funds in excess of \$50.00; and (4) filing a Holder Report. If those procedures are established and followed, it should eliminate the possibility of discipline for improperly retaining funds belonging to others in the firm's trust account.

NOTE: If the last known address of the owner is that of another state, the property is not subject to the North Carolina Unclaimed Property Act. As all 50 states have unclaimed property laws, it is likely it will be subject to the state of the owner's last known address. So, the property manager should check the laws of the other state - though there is some uniformity between the states, it is not uncommon for other states to have different dormancy periods.

REFERENCES

1. [N.C.G.S. § 116B-51 et seq.](#)
2. [N.C.G.S. §116B-59](#)