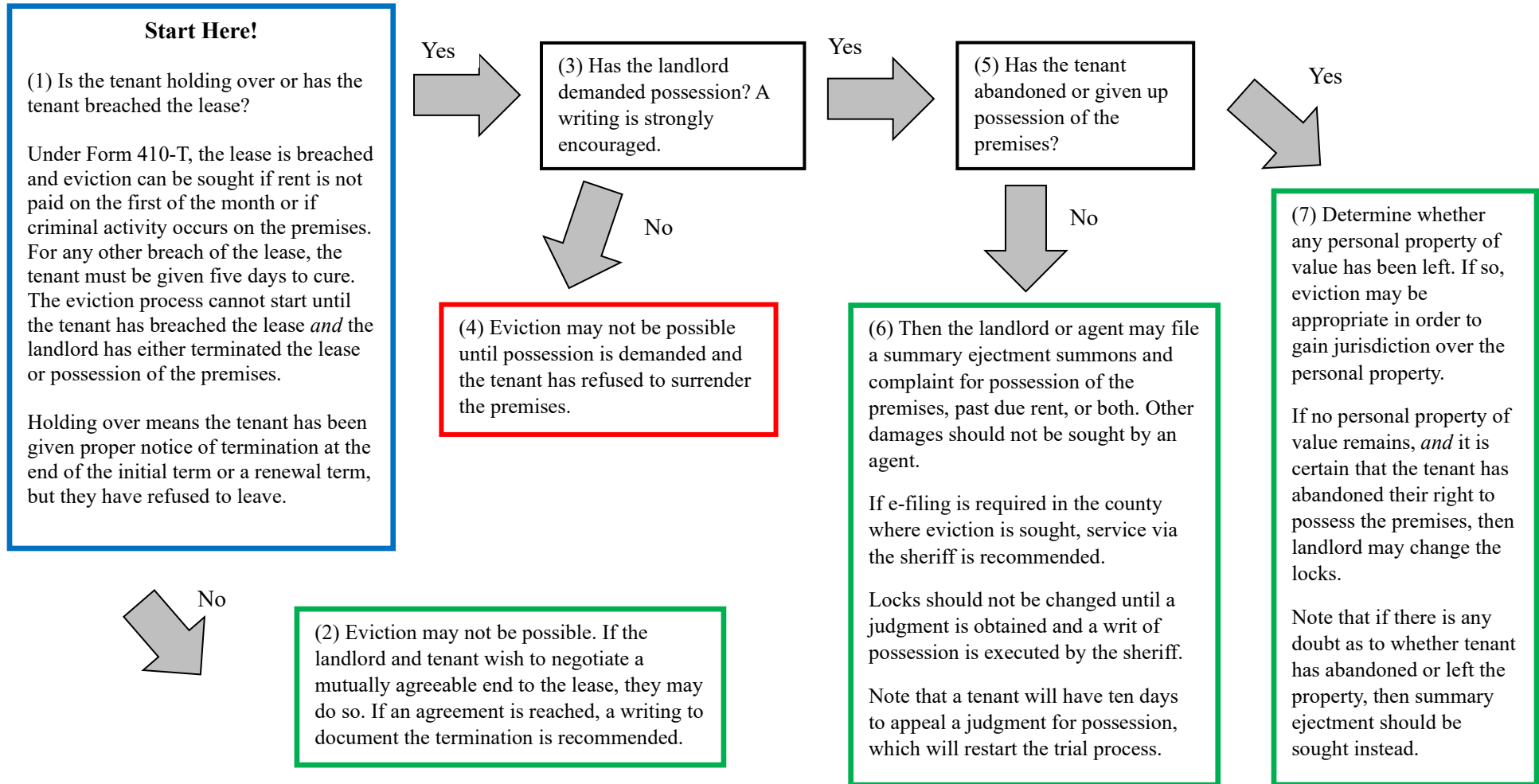


SMALL CLAIMS SUMMARY EJECTMENT FLOWCHART

WARNING: In North Carolina, real estate agents cannot practice law. However, North Carolina law does permit real estate agents managing a landlord's property to seek summary ejectment and a judgment for past due rent in small claims cases. If a small claims case is appealed to district court, a landlord may need to seek legal counsel to respond to the tenant's appeal.



IMPORTANT INFORMATION

1. **Use of this Form.** This flowchart is primarily focused on tenancies created with NC REALTORS®' Residential Rental Contract (Form 410-T). If another lease is used, the language in the lease will control and may affect the remedies and processes discussed herein.
2. **Ten-Day Notice Not Required.** If the lease is on Form 410-T, the landlord does *not* have to give the tenant a ten-day notice to quit the premises when demanding possession. *See Charlotte Office Tower Associates v. Carolina SNS Corp.*, 89 N.C. App. 697, 700, 366 S.E.2d 905, 907 (1988) (“G.S. 42-3 applies *only* when a lease does not expressly provide for the landlord’s reentry upon nonpayment of rents.”) (Emphasis in original). Form 410-T makes clear that reentry (in other words, a demand for possession) may be sought by a landlord when the tenant either fails to timely pay rent, commits or allows criminal activity on or near the premises, or fails to perform any other part of the lease after being given five days to cure. If any of these events are satisfied, the landlord may demand possession immediately. Form 427-T may be used to demand possession.
3. **Tenant’s Remedy if Ten-Day Notice Used.** If a ten-day notice is given by a landlord, and that notice is alleged in the small claims complaint, the eviction may be dismissed by the court if the tenant makes full payment. *See* N.C.G.S. § 42-33. This is true even if Form 410-T is used as the lease. Landlords and brokers should therefore fill out the small claims complaint carefully and only allege the ten-day notice statute if it is being used as grounds for eviction instead of the lease.
4. **Terminating Possession v. Terminating the Lease.** Like many leases, Form 410-T outlines two main remedies for a tenant’s breach: terminate possession or terminate the lease. These two remedies are very different, and in most residential tenancies, the landlord will want to terminate possession instead of terminating the lease.
 - a. If the landlord terminates the tenant’s right of possession, then the rest of lease continues to be in effect, including the tenant’s obligations to pay rent and to clean out the premises upon move-out. By holding the tenant to the lease, the landlord ensures that even after the tenant has left the property, the landlord can collect damages for unpaid rent until the property is re-rented (assuming the landlord uses reasonable efforts to re-rent the property to mitigate their damages).
 - b. If the landlord terminates the lease, then the tenant’s obligations under the lease are terminated, including the tenant’s obligation to pay rent. This remedy may be useful in cases where the tenant is considering bankruptcy, and the lease may become subject to control by the trustee. It may also be useful in cases where the tenant has a right to cure under the lease, but the landlord wants to rent the property another tenant and cut off the right to cure. These scenarios, however, are rare under Form 410-T and are more common in the commercial context. Therefore, before terminating a lease, a broker should first consult with the landlord and their legal counsel.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC., MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM. YOU SHOULD CONSULT A NORTH CAROLINA ATTORNEY PRIOR TO DISPOSING OF TENANT PERSONAL PROPERTY IF THERE IS ANY QUESTION AS TO WHETHER DISPOSAL OF SUCH PERSONAL PROPERTY IS ALLOWED BY NORTH CAROLINA LAW.

