

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 974*

Short Title: Vacation Rental Act.

(Public)

Sponsors: Senator Soles.

Referred to: Commerce.

April 15, 1999

1 A BILL TO BE ENTITLED
2 AN ACT REGULATING THE RENTAL OF RESIDENTIAL PROPERTY FOR
3 VACATION, LEISURE, OR RECREATION PURPOSES.

4 The General Assembly of North Carolina enacts:

5 Section 1. The General Statutes are amended by adding a new Chapter to read:
6

7 **"CHAPTER 42A.**
8 **"VACATION RENTAL ACT.**
9 **"ARTICLE 1.**
10 **"VACATION RENTALS.**

11 **"§42A-1. Title.**

12 This Chapter shall be known as the North Carolina Vacation Rental Act.

13 **"§ 42A-2. Purpose and scope of act.**

14 The General Assembly finds that the growth of the tourism industry in North Carolina
15 has led to a greatly expanded market of privately owned residences that are rented to
16 tourists for vacation, leisure, and recreational purposes. Rental transactions conducted by
17 the owners of these residences or licensed real estate brokers acting on their behalf
18 present unique situations not normally found in the rental of primary residences for long
19 terms, and therefore make it necessary for the General Assembly to enact laws regulating
20 the competing interests of landlords, real estate brokers, and tenants.

1 **"§ 42A-3. Application; exemptions.**

2 (a) The provisions of this Chapter shall apply to any person, partnership,
3 corporation, limited liability company, association, or other business entity who acts as a
4 landlord or real estate broker engaged in the rental or management of residential property
5 for vacation rental as defined in this Chapter.

6 (b) The provisions of this Chapter shall not apply to:

7 (1) Lodging provided by hotels, motels, tourist camps, and other places
8 subject to regulation under Chapter 72 of the General Statutes.

9 (2) Rentals to persons temporarily renting a dwelling unit when traveling
10 away from their home for business or employment purposes.

11 (3) Rentals to persons having no other place of permanent residence.

12 **"§ 42A-4. Definitions.**

13 The following definitions apply in this Chapter:

14 (1) Residential property. – An apartment, condominium, single family
15 home, town house, cottage, or other property that is devoted to
16 residential use or occupancy by one or more persons for a definite or
17 indefinite period.

18 (2) Vacation rental. – The rental of residential property for vacation,
19 leisure, or recreation purposes for fewer than 90 days by a person who
20 has a place of permanent residence to which he or she intends to return.

21 (3) Vacation rental agreement. – A written agreement between a landlord
22 or his or her real estate broker and a tenant in which the tenant agrees to
23 rent residential property belonging to the landlord for a vacation rental.

24 **"ARTICLE 2.**

25 **"VACATION RENTAL AGREEMENTS.**

26 **"§ 42A-10. Written agreement required.**

27 (a) A landlord or real estate broker and tenant shall execute a vacation rental
28 agreement for all vacation rentals subject to the provisions of this Chapter. No vacation
29 rental agreement shall be valid and enforceable unless the tenant has accepted the
30 agreement as evidenced by one of the following:

31 (1) The tenant's signature on the agreement.

32 (2) The tenant's payment of any monies to the landlord or real estate broker
33 after the tenant's receipt of the agreement.

34 (3) The tenant's possession of the property after the tenant's receipt of the
35 agreement.

36 (b) Any landlord or real estate broker who executes a vacation rental agreement
37 that does not conform to the provisions of this Chapter or fails to execute a vacation
38 rental agreement shall be guilty of an unfair trade practice in violation of G.S. 75-1.1, and
39 shall be prohibited from commencing an expedited eviction proceeding as provided in
40 Article 4 of this Chapter.

41 **"§ 42A-11. Vacation rental agreements.**

42 (a) A vacation rental agreement executed under this Chapter shall contain the
43 following notice on its face which shall be set forth in a clear and conspicuous manner

1 that distinguishes it from other provisions of the agreement: THIS IS A VACATION
2 RENTAL AGREEMENT UNDER THE NORTH CAROLINA VACATION RENTAL
3 ACT. THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO THIS
4 AGREEMENT ARE DEFINED BY LAW AND INCLUDE UNIQUE PROVISIONS
5 PERMITTING THE DISBURSEMENT OF RENT AND EXPEDITED EVICTION OF
6 TENANTS. YOUR SIGNATURE ON THIS AGREEMENT, PAYMENT OF MONEY,
7 OR POSSESSION OF THE PROPERTY IS CONCLUSIVE PROOF OF YOUR
8 ACCEPTANCE OF THE AGREEMENT AND YOUR INTENT TO USE THIS
9 PROPERTY FOR A VACATION RENTAL.

10 (b) The vacation rental agreement shall contain provisions separate from the
11 requirements of subsection (a) of this section which shall describe the following as
12 permitted or required by this Chapter:

- 13 (1) The manner in which funds shall be received, deposited, and disbursed
14 in advance of the tenant's occupancy of the property.
15 (2) The imposition of any nonrefundable charges.
16 (3) The applicability of expedited eviction procedures.
17 (4) A description of the obligations of the landlord and tenant as provided
18 by this Chapter.

19 "ARTICLE 3.

20 "HANDLING AND ACCOUNTING OF FUNDS.

21 "§ 42A-15. Trust account uses.

22 A landlord or real estate broker may require a tenant to pay all or part of any required
23 rent, security deposit, or other fees permitted by law in advance of the commencement of
24 a tenancy under this Chapter if advance payments are expressly authorized in the
25 vacation rental agreement. If the tenant is required to make any advance payments, other
26 than a security deposit, whether the payment is denominated as rent or otherwise, the
27 landlord or real estate broker shall deposit the advance payments in a trust or escrow
28 account that conforms to the requirements of G.S. 93A-6(a)(12) no later than three
29 banking days after the receipt of the advance payments. Advance payments deposited in
30 a trust account shall not earn interest unless the landlord and tenant agree in the vacation
31 rental agreement that the payments may be deposited in an interest-bearing account. The
32 landlord and tenant shall also provide in the agreement to whom the accrued interest shall
33 be disbursed.

34 "§ 42A-16. Advance payments uses.

35 (a) A landlord or real estate broker shall disburse no more than fifty percent (50%)
36 of the gross rent received from the tenant prior to the occupancy of the property by the
37 tenant, but may disburse any nonrefundable fees to third parties to pay for goods,
38 services, or benefits procured by the landlord or real estate broker for the benefit of the
39 tenant if the disbursement is expressly authorized in the vacation rental agreement. The
40 remaining funds shall be maintained in a trust account and may not be disbursed until the
41 occurrence of one of the following:

- 42 (1) The commencement of the tenancy, at which time the remaining funds
43 may be disbursed in accordance with the terms of the agreement.

1 (2) The tenant commits a material breach, at which time the landlord may
2 retain an amount sufficient to defray the actual damages suffered by the
3 landlord as a result of the breach.

4 (3) The landlord or real estate broker refunds the money to the tenant.

5 (b) Funds collected for sales or occupancy taxes and tenant security deposits shall
6 not be disbursed from the trust or escrow account prior to occupancy of the property by
7 the tenant, except as a refund to the tenant.

8 (c) The tenant's execution of a vacation rental agreement in which he or she agrees
9 to the advance disbursement of payments shall not constitute a waiver or loss of any of
10 the tenant's rights to reimbursement of such payments if the tenant is lawfully entitled to
11 reimbursement.

12 **"§ 42A-17. Accounting; reimbursement; nonrefundable fees.**

13 (a) A vacation rental agreement shall identify the name and address of the bank or
14 savings and loan association in which the tenant's security deposit and other advance
15 payments are held in a trust or escrow account, and the landlord or real estate broker shall
16 provide the tenant with an accounting of such deposit and payments if the tenant makes a
17 reasonable request for an accounting prior to the tenant's occupancy of the property.

18 (b) If, at the time the tenant is to begin occupancy of the property, the landlord or
19 real estate broker cannot provide the property in a fit and habitable condition or substitute
20 a reasonably comparable property in such condition, the landlord or real estate broker
21 shall refund to the tenant all payments made by the tenant, except any nonrefundable fees
22 permitted in subsection (c) of this section.

23 (c) A vacation rental agreement may provide that the following fees shall be
24 nonrefundable:

25 (1) A fee, the amount of which shall be provided in the agreement,
26 reasonably calculated to cover the costs of processing the tenant's
27 reservation, transfer, or cancellation of a vacation rental.

28 (2) A fee equaling the actual cost of services, goods, or benefits to be
29 rendered to the tenant by a third party.

30 **"§ 42A-18. Applicability of the Residential Tenant Security Deposit Act.**

31 (a) Except as may otherwise be provided in this Chapter, all funds collected from a
32 tenant and not identified in the vacation rental agreement as occupancy or sales taxes,
33 nonrefundable fees, or advance rent payments shall be considered a tenant security
34 deposit and shall be subject to the provisions of the Residential Tenant Security Deposit
35 Act. In addition to the permitted uses of tenant security deposit monies as provided in
36 G.S. 42-51, a landlord or real estate broker may, after the termination of a tenancy under
37 this Chapter, deduct from any tenant security deposit the amount of any telephone calls or
38 other utility charges left unpaid by the tenant at the conclusion of the tenancy. The
39 landlord or real estate broker shall apply, account for, or refund tenant security deposit
40 monies as provided in G.S. 42-51 within 45 days following the conclusion of the tenancy.

41 (b) A vacation rental agreement shall not contain language compelling or
42 permitting the automatic forfeiture of all or part of a tenant security deposit in case of
43 breach of contract by the tenant, and no such forfeiture shall be allowed. The vacation

1 rental agreement shall provide that a tenant security deposit may be applied to actual
2 damages to the residential property caused by the tenant.

3 **"§ 42A-19. Transfer of property subject to a vacation rental agreement.**

4 (a) The grantee of residential property voluntarily transferred by a landlord who
5 has entered into a vacation rental agreement for the use of the property shall take his or
6 her title subject to the vacation rental agreement if the vacation rental is to begin and end
7 not later than 180 days after the grantee's interest in the property is recorded in the office
8 of the register of deeds. The landlord or real estate broker shall disclose to the grantee
9 the tenant's name and address and shall provide the grantee with a copy of the vacation
10 rental agreement. Within 10 days after the recording of the grantee's interest in the
11 property, the grantee shall:

12 (1) Notify the tenant in writing of the property transfer, the grantee's name
13 and address, and the date the grantee's interest was recorded.

14 (2) Advise the tenant of his or her right to occupy the property subject to
15 the terms of the vacation rental agreement.

16 (3) Advise the tenant of his or her right to receive a refund of any payments
17 made by him or her.

18 If the vacation rental is to end more than 180 days after the recording of the grantee's
19 interest, the tenant shall have no right to enforce the terms of the agreement unless the
20 grantee has agreed in writing to honor such terms, but the tenant shall be entitled to a
21 refund of any advance payments made by him or her.

22 (b) If, prior to the tenant's occupancy of the property, the landlord's interest in the
23 property is involuntarily transferred to another, the landlord shall refund to the tenant
24 within 60 days after the transfer any advance payments made by the tenant.

25 (c) The failure of a landlord to comply with the provisions of this section shall
26 constitute an unfair trade practice in violation of G.S. 75-1.1.

27 **"ARTICLE 4.**

28 **"EXPEDITED EVICTION PROCEEDINGS.**

29 **"§ 42A-23. Grounds for eviction.**

30 (a) Any tenant who leases residential property under this Chapter for 30 days or
31 less may be evicted and removed from the property in an expedited eviction proceeding
32 as provided in this Article if the tenant does one of the following:

33 (1) Holds over possession after his or her tenancy has expired.

34 (2) Has committed a material breach of the terms of the vacation rental
35 agreement that, according to the terms of the agreement, results in the
36 termination of his or her tenancy.

37 (3) Fails to pay rent as required by the agreement.

38 (4) Has obtained possession of the property by fraud or misrepresentation.

39 (b) Only the right to possession, including abandoned property, damages to the
40 property, rights to setoffs for breach of contract, and other similar rights shall be relevant
41 in an expedited eviction proceeding. All other issues related to the rental of the
42 residential property shall be presented in a separate civil action.

43 **"§ 42A-24. Expedited eviction.**

1 (a) Before commencing an expedited eviction proceeding, the landlord or real
2 estate broker shall give the tenant at least four hours' notice, either orally or in writing, to
3 quit the premises. If reasonable efforts to personally give oral or written notice have
4 failed, written notice may be given by posting the notice on the front door of the property.

5 (b) An expedited eviction proceeding shall commence with the filing of a
6 complaint and issuance of summons in the county where the property is located. If the
7 office of the clerk of superior court is closed, the complaint shall be filed with, and the
8 summons issued by, a magistrate. The service of the summons and complaint for
9 expedited eviction shall be made by a sworn law enforcement officer on the tenant
10 personally or by posting a copy of the summons and complaint on the front door of the
11 property. Return of service shall be promptly made by the law enforcement officer to the
12 magistrate. A hearing on the expedited eviction shall be held before a magistrate in the
13 county where the property is located not sooner than 12 hours after service upon the
14 tenant and no later than 48 hours after such service.

15 (c) The complaint for expedited eviction shall allege and the landlord or real estate
16 broker shall prove the following at the hearing:

17 (1) The vacation rental is for a term of 30 days or less.

18 (2) The tenant entered into and accepted a vacation rental agreement that
19 conforms to the provisions of this Chapter.

20 (3) The tenant breached a material term of the agreement.

21 (4) The landlord or real estate broker has given notice to the tenant to
22 vacate as a result of the breach.

23 The rules of evidence shall not apply in an expedited eviction proceeding, and the court
24 shall allow any reasonably reliable and material statements, documents, or other exhibits
25 to be admitted as evidence.

26 (d) If the court finds for the landlord or real estate broker, the court shall
27 immediately enter a written order stating the time when the tenant shall vacate the
28 property, but in no case shall the time be less than 2 hours or more than 8 hours after
29 service of the order on the tenant. The court's order shall be served on the tenant at the
30 hearing. If the tenant does not appear at the hearing or leaves before the order is served,
31 the order shall be served by posting it on the front door of the property by the landlord,
32 real estate broker, or any sworn law enforcement officer.

33 **"§ 42A-25. Appeal.**

34 A tenant or landlord may appeal a court order issued pursuant to G.S. 42A-24(d)
35 to district court. A tenant may petition the district court to stay the eviction
36 order and shall post a cash or secured bond with the court. The amount of the bond shall
37 be an estimate of the rent that will become due while the tenant is prosecuting the appeal,
38 reasonable damages that the landlord may suffer, including damage to property and
39 damages arising from the inability of the landlord or real estate broker to honor other
40 vacation rental agreements due to the tenant's possession of the property, and the costs of
41 the appeal to the landlord or real estate broker.

42 **"§ 42A-26. Violation of court order.**

1 If a tenant fails to remove personal property from a residential property subject to a
2 vacation rental after the court has entered an order of eviction, the landlord or real estate
3 broker shall have the same rights as provided in G.S. 42-36.2(b) as if the sheriff had
4 not removed the tenant's property. The failure of a tenant or the guest of a tenant to
5 vacate a residential property in accordance with a court order issued pursuant to G.S.
6 42A-24(d) shall constitute a criminal trespass under G.S. 14-159.13.

7 **"§ 42A-27. Penalties for abuse.**

8 A landlord or real estate broker shall undertake to evict a tenant pursuant to an
9 expedited eviction proceeding only when he or she has a good faith belief that grounds
10 for eviction exists under the provisions of this Chapter. Otherwise, the landlord or real
11 estate broker shall be guilty of an unfair trade practice under G.S. 75-1.1 and a Class 1
12 misdemeanor.

13 **"ARTICLE 5.**

14 **"LANDLORD AND TENANT DUTIES.**

15 **"§ 42A-31. Landlord to provide fit premises.**

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

- 17 (1) Comply with all current applicable building and housing codes.
- 18 (2) Make all repairs and do whatever is reasonably necessary to put and
19 keep the property in a fit and habitable condition.
- 20 (3) Keep all common areas of the property in safe condition.
- 21 (4) Maintain in good and safe working order and reasonably and promptly
22 repair all electrical, plumbing, sanitary, heating, ventilating, and other
23 facilities and appliances supplied by him or her upon written
24 notification from the tenant that repairs are needed.
- 25 (5) Provide operable smoke detectors. The landlord shall replace or repair
26 the smoke detectors if the landlord is notified by the tenant in writing
27 that replacement or repair is needed. The landlord shall annually place
28 new batteries in a battery-operated smoke detector, and the tenant shall
29 replace the batteries as needed during the tenancy. Failure of the tenant
30 to replace the batteries as needed shall not be considered negligence on
31 the part of the tenant or landlord.

32 **"§ 42A-32. Tenant to maintain dwelling unit.**

33 The tenant of a residential property used for a vacation rental:

- 34 (1) Keep that part of the property which he or she occupies and uses as
35 clean and safe as the conditions of the property permit and cause no
36 unsafe or unsanitary conditions in the common areas and remainder of
37 the property that he or she uses.
- 38 (2) Dispose of all ashes, rubbish, garbage, and other waste in a clean and
39 safe manner.
- 40 (3) Keep all plumbing fixtures in the property or used by the tenant as clean
41 as their condition permits.

- 1 (4) Not deliberately or negligently destroy, deface, damage, or remove any
- 2 part of the property or render inoperable the smoke detector provided by
- 3 the landlord or knowingly permit any person to do so.
- 4 (5) Comply with all obligations imposed upon the tenant by current
- 5 applicable building and housing codes.
- 6 (6) Be responsible for all damage, defacement, or removal of any property
- 7 inside the property that is in his or her exclusive control unless the
- 8 damage, defacement, or removal was due to ordinary wear and tear, acts
- 9 of the landlord or his or her agent, defective products supplied or repairs
- 10 authorized by the landlord, acts of third parties not invitees of the
- 11 tenant, or natural forces.
- 12 (7) Notify the landlord of the need for replacement of or repairs to a smoke
- 13 detector. The landlord shall annually place new batteries in a battery-
- 14 operated smoke detector, and the tenant shall replace the batteries as
- 15 needed during the tenancy. Failure of the tenant to replace the batteries
- 16 as needed shall not be considered negligence on the part of the tenant or
- 17 the landlord.

"ARTICLE 6.

"GENERAL PROVISIONS.

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19
20 **"§ 42A-36. Mandatory evacuations.**

21 If State or local authorities order a mandatory evacuation of an area that includes a

22 residential property subject to a vacation rental, the tenant in possession of the property

23 shall comply with the evacuation order and, upon compliance, shall be entitled to a

24 refund from the landlord of the prorated rent for each day that the tenant was unable to

25 occupy the property because of the evacuation order. The tenant shall not be entitled to a

26 refund if: (i) prior to the tenant taking possession of the property, the tenant refused

27 insurance offered by the landlord or real estate broker that would have compensated him

28 or her for losses or damages resulting from loss of use of the property due to a mandatory

29 evacuation order; or (ii) the tenant purchased insurance offered by the landlord or real

30 estate broker. The insurance offered shall be provided by an insurance company duly

31 authorized by the North Carolina Department of Insurance, and the cost of the insurance

32 shall not exceed eight percent (8%) of the gross rent charged for the vacation rental.

33 **"§ 42A-37. Late fees.**

34 The provisions of Chapter 42 pertaining to the imposition of late fees shall not apply

35 to vacation rentals under this Chapter."

36 Section 2. This act is effective when it becomes law.