

GENERAL ASSEMBLY OF NORTH CAROLINA

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SENATE BILL 974*
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Short Title: Vacation Rental Act.

(Public)

Sponsors:

Referred to:

April 15, 1999

1 A BILL TO BE ENTITLED
2 AN ACT REGULATING THE RENTAL OF RESIDENTIAL PROPERTY FOR
3 VACATION, LEISURE, OR RECREATIONAL PURPOSES, AND CLARIFYING
4 THE RIGHTS AND OBLIGATIONS OF LANDLORDS AND TENANTS OF
5 RESIDENTIAL PROPERTY.

6 The General Assembly of North Carolina enacts:

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

8 **"CHAPTER 42A.**

9 **"VACATION RENTAL ACT.**

10 **"ARTICLE 1.**

11 **"VACATION RENTALS.**

12 **"§ 42A-1. Title.**

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

14 **"§ 42A-2. Purpose and scope of act.**

15 The General Assembly finds that the growth of the tourism industry in North Carolina
16 has led to a greatly expanded market of privately owned residences that are rented to
17 tourists for vacation, leisure, and recreational purposes. Rental transactions conducted by

1 the owners of these residences or licensed real estate brokers acting on their behalf
2 present unique situations not normally found in the rental of primary residences for long
3 terms, and therefore make it necessary for the General Assembly to enact laws regulating
4 the competing interests of landlords, real estate brokers, and tenants.

5 **"§ 42A-3. Application; exemptions.**

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

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

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

13 (2) Rentals to persons temporarily renting a dwelling unit when traveling
14 away from their primary residence for business or employment
15 purposes.

16 (3) Rentals to persons having no other place of primary residence.

17 (4) Rentals for which no more than nominal consideration is given.

18 **"§ 42A-4. Definitions.**

19 The following definitions apply in this Chapter:

20 (1) Real estate broker. – A real estate broker as defined in G.S. 93A-2(a).

21 (2) Residential property. – An apartment, condominium, single-family
22 home, townhouse, cottage, or other property that is devoted to
23 residential use or occupancy by one or more persons for a definite or
24 indefinite period.

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

28 (4) Vacation rental agreement. – A written agreement between a landlord
29 or his or her real estate broker and a tenant in which the tenant agrees to
30 rent residential property belonging to the landlord for a vacation rental.

31 **"ARTICLE 2.**

32 **"VACATION RENTAL AGREEMENTS.**

33 **"§ 42A-10. Written agreement required.**

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

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

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

41 (3) The tenant's taking possession of the property after the tenant's receipt
42 of the agreement.

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

6 **"§ 42A-11. Vacation rental agreements.**

7 (a) A vacation rental agreement executed under this Chapter shall contain the
8 following notice on its face which shall be set forth in a clear and conspicuous manner
9 that distinguishes it from other provisions of the agreement: 'THIS IS A VACATION
10 RENTAL AGREEMENT UNDER THE NORTH CAROLINA VACATION RENTAL
11 ACT. THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO THIS
12 AGREEMENT ARE DEFINED BY LAW AND INCLUDE UNIQUE PROVISIONS
13 PERMITTING THE DISBURSEMENT OF RENT PRIOR TO TENANCY AND
14 EXPEDITED EVICTION OF TENANTS. YOUR SIGNATURE ON THIS
15 AGREEMENT, OR PAYMENT OF MONEY OR TAKING POSSESSION OF THE
16 PROPERTY AFTER RECEIPT OF THE AGREEMENT, IS EVIDENCE OF YOUR
17 ACCEPTANCE OF THE AGREEMENT AND YOUR INTENT TO USE THIS
18 PROPERTY FOR A VACATION RENTAL.'

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

- 22 (1) The manner in which funds shall be received, deposited, and disbursed
23 in advance of the tenant's occupancy of the property.
- 24 (2) Any processing fees permitted under G.S. 42A-17(c).
- 25 (3) The rights and obligations of the landlord and tenant under G.S. 42A-
26 17(b).
- 27 (4) The applicability of expedited eviction procedures.
- 28 (5) The rights and obligations of the landlord or real estate broker and the
29 tenant upon the transfer of the property.
- 30 (6) The rights and obligations of the landlord or real estate broker and the
31 tenant under G.S. 42A-36.
- 32 (7) Any other obligations of the landlord and tenant.

33 **"ARTICLE 3.**

34 **"HANDLING AND ACCOUNTING OF FUNDS.**

35 **"§ 42A-15. Trust account uses.**

36 A landlord or real estate broker may require a tenant to pay all or part of any required
37 rent, security deposit, or other fees permitted by law in advance of the commencement of
38 a tenancy under this Chapter if these payments are expressly authorized in the vacation
39 rental agreement. If the tenant is required to make any advance payments, other than a
40 security deposit, whether the payment is denominated as rent or otherwise, the landlord
41 or real estate broker shall deposit these payments in a trust account in an insured bank or
42 savings and loan association in North Carolina no later than three banking days after the
43 receipt of the these payments. These payments deposited in a trust account shall not earn

1 interest unless the landlord and tenant agree in the vacation rental agreement that the
2 payments may be deposited in an interest-bearing account. The landlord and tenant shall
3 also provide in the agreement to whom the accrued interest shall be disbursed.

4 **"§ 42A-16. Advance payments uses.**

5 (a) A landlord or real estate broker shall not disburse prior to the occupancy of the
6 property by the tenant an amount greater than fifty percent (50%) of the total rent except
7 as permitted pursuant to this subsection. A landlord or real estate broker may disburse
8 prior to the occupancy of the property by the tenant any fees owed to third parties to pay
9 for goods, services, or benefits procured by the landlord or real estate broker for the
10 benefit of the tenant, including administrative fees permitted by G.S. 42A-17(c), if the
11 disbursement is expressly authorized in the vacation rental agreement. The funds
12 remaining after any disbursement permitted under this subsection shall remain in the trust
13 account and may not be disbursed until the occurrence of one of the following:

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

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

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

20 (4) The funds in the trust account are transferred in accordance with G.S.
21 42A-19(b) upon the termination of the landlord's interest in the
22 property.

23 (b) Funds collected for sales or occupancy taxes and tenant security deposits shall
24 not be disbursed from the trust account prior to termination of the tenancy or material
25 breach of the agreement by the tenant, except as a refund to the tenant.

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

30 **"§ 42A-17. Accounting; reimbursement.**

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

36 (b) Except as otherwise provided in this subsection, if, at the time the tenant is to
37 begin occupancy of the property, the landlord or real estate broker cannot provide the
38 property in a fit and habitable condition or substitute a reasonably comparable property in
39 such condition, the landlord and real estate broker shall refund to the tenant all payments
40 made by the tenant.

41 (c) A vacation rental agreement may include administrative fees, the amounts of
42 which shall be provided in the agreement, reasonably calculated to cover the costs of
43 processing the tenant's reservation, transfer, or cancellation of a vacation rental.

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

(a) Except as may otherwise be provided in this Chapter, all funds collected from a tenant and not identified in the vacation rental agreement as occupancy or sales taxes, fees, or rent payments shall be considered a tenant security deposit and shall be subject to the provisions of the Residential Tenant Security Deposit Act, as codified in Article 6 of Chapter 42 of the General Statutes. Funds collected as a tenant security deposit in connection with a vacation rental shall be deposited into a trust account as required by G.S. 42-50. The landlord or real estate broker shall not have the option of obtaining a bond in lieu of maintaining security deposit funds in a trust account. In addition to the permitted uses of tenant security deposit monies as provided in G.S. 42-51, a landlord or real estate broker may, after the termination of a tenancy under this Chapter, deduct from any tenant security deposit the amount of any long distance or per call telephone charges and cable television charges that are the obligation of the tenant under the vacation rental agreement and are left unpaid by the tenant at the conclusion of the tenancy. The landlord or real estate broker shall apply, account for, or refund tenant security deposit monies as provided in G.S. 42-51 within 45 days following the conclusion of the tenancy.

(b) A vacation rental agreement shall not contain language compelling or permitting the automatic forfeiture of all or part of a tenant security deposit in case of breach of contract by the tenant, and no such forfeiture shall be allowed. The vacation rental agreement shall provide that a tenant security deposit may be applied to actual damages caused by the tenant as permitted under Article 6 of Chapter 42 of the General Statutes.

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

(a) The grantee of residential property voluntarily transferred by a landlord who has entered into a vacation rental agreement for the use of the property shall take his or her title subject to the vacation rental agreement if the vacation rental is to end not later than 180 days after the grantee's interest in the property is recorded in the office of the register of deeds. If the vacation rental is to end more than 180 days after the recording of the grantee's interest, the tenant shall have no right to enforce the terms of the agreement unless the grantee has agreed in writing to honor such terms, but the tenant shall be entitled to a refund of any payments made by him or her. Prior to entering into any contract of sale, the landlord shall disclose to the grantee the time periods that the property is subject to a vacation rental agreement. Not later than 10 days after entering into the contract of sale the landlord shall disclose to the grantee each tenant's name and address and shall provide the grantee with a copy of each vacation rental agreement. Not later than 10 days after transfer of the property, the grantee or the grantee's agent shall:

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

(2) Advise each tenant whether he or she has the right to occupy the property subject to the terms of the vacation rental agreement and the provisions of this section.

(3) Advise each tenant of whether he or she has the right to receive a refund of any payments made by him or her.

1 (b) Except as otherwise provided in this subsection, upon termination of the
2 landlord's interest in the residential property subject to a vacation rental agreement,
3 whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or
4 the landlord's agent, or the real estate broker, shall, within 30 days, transfer all advance
5 rent paid by the tenant, and the portion of any fees remaining after any lawful deductions
6 made under G.S. 42A-16, to the landlord's successor in interest and thereafter notify the
7 tenant by mail of such transfer and of the transferee's name and address. For vacation
8 rentals that end more than 180 days after the recording of the interest of the landlord's
9 successor in interest, unless the landlord's successor in interest has agreed in writing to
10 honor the vacation rental agreement, the landlord or the landlord's agent, or the real estate
11 broker, shall, within 30 days, transfer all advance rent paid by the tenant, and the portion
12 of any fees remaining after any lawful deductions made under G.S. 42A-16, to the tenant.
13 Compliance with this subsection shall relieve the landlord or real estate broker of further
14 liability with respect to any payment of rent or fees. Funds held as a security deposit
15 shall be disbursed in accordance with G.S. 42A-18.

16 (c) If, prior to the tenant's occupancy of the property, the landlord's interest in the
17 property is involuntarily transferred to another, the landlord shall refund to the tenant
18 within 60 days after the transfer any payments made by the tenant.

19 (d) The failure of a landlord to comply with the provisions of this section shall
20 constitute an unfair trade practice in violation of G.S. 75-1.1. A landlord who complies
21 with the requirements of this section shall have no further obligations to the tenant.

22 "ARTICLE 4.

23 "EXPEDITED EVICTION PROCEEDINGS.

24 "§ 42A-23. Grounds for eviction.

25 (a) Any tenant who leases residential property subject to a vacation rental
26 agreement under this Chapter for 30 days or less may be evicted and removed from the
27 property in an expedited eviction proceeding brought by the landlord, or real estate
28 broker as agent for the landlord, as provided in this Article if the tenant does one of the
29 following:

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

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

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

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

36 (b) Only the right to possession shall be relevant in an expedited eviction
37 proceeding. All other issues related to the rental of the residential property shall be
38 presented in a separate civil action.

39 "§ 42A-24. Expedited eviction.

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

1 (b) An expedited eviction proceeding shall commence with the filing of a
2 complaint and issuance of summons in the county where the property is located. If the
3 office of the clerk of superior court is closed, the complaint shall be filed with, and the
4 summons issued by, a magistrate. The service of the summons and complaint for
5 expedited eviction shall be made by a sworn law enforcement officer on the tenant
6 personally or by posting a copy of the summons and complaint on the front door of the
7 property. The officer, upon service, shall promptly file a return therefor. A hearing on
8 the expedited eviction shall be held before a magistrate in the county where the property
9 is located not sooner than 12 hours after service upon the tenant and no later than 48
10 hours after such service. To the extent that the provisions of this Article are in conflict
11 with the Rules of Civil Procedure, Chapter 1A of the General Statutes, with respect to the
12 commencement of an action or service of process, this Article controls.

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

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

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

18 (3) The tenant committed one or more of the acts listed in G.S. 42A-23(a)
19 as grounds for eviction.

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

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. The provisions of G.S. 7A-218, 7A-219, and 7A-220, except
26 any provisions regarding amount in controversy, shall apply to an expedited eviction
27 proceeding held before the magistrate. These provisions shall not be construed to
28 broaden the scope of an expedited eviction proceeding to issues other than the right to
29 possession.

30 (d) If the court finds for the landlord or real estate broker, the court shall
31 immediately enter a written order granting the landlord or real estate broker possession
32 and stating the time when the tenant shall vacate the property. In no case shall this time
33 be less than 2 hours or more than 8 hours after service of the order on the tenant. The
34 court's order shall be served on the tenant at the hearing. If the tenant does not appear at
35 the hearing or leaves before the order is served, the order shall be served by delivering
36 the order to the tenant or by posting the order on the front door of the property by any
37 sworn law enforcement officer. The officer, upon service, shall file a return therefor.

38 If the court finds for the landlord or real estate broker, the court shall determine the
39 amount of the appeal bond that the tenant shall be required to post should the tenant seek
40 to appeal the court order. The amount of the bond shall be an estimate of the rent that
41 will become due while the tenant is prosecuting the appeal and reasonable damages that
42 the landlord may suffer, including damage to property and damages arising from the

1 inability of the landlord or real estate broker to honor other vacation rental agreements
2 due to the tenant's possession of the property.

3 **"§ 42A-25. Appeal.**

4 A tenant or landlord may appeal a court order issued pursuant to G.S. 42A-24(d)
5 to district court for a trial de novo. A tenant may petition the district court to
6 stay the eviction order and shall post a cash or secured bond with the court in the amount
7 determined by the court pursuant to G.S. 42A-24(d).

8 **"§ 42A-26. Violation of court order.**

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

15 **"§ 42A-27. Penalties for abuse.**

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

21 **"ARTICLE 5.**

22 **"LANDLORD AND TENANT DUTIES.**

23 **"§ 42A-31. Landlord to provide fit premises.**

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

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

40 These duties shall not be waived; however, the landlord and tenant may make
41 additional covenants not inconsistent herewith in the vacation rental agreement.

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

43 The tenant of a residential property used for a vacation rental shall:

1 and the cost of the insurance shall not exceed eight percent (8%) of the total rent charged
2 for the vacation rental to the tenant."

3 Section 2. G.S. 42-40(2) reads as rewritten:

4 "(2) "Premises" means a dwelling unit, including mobile homes or mobile home
5 spaces, and the structure of which it is a part and facilities and appurtenances therein and
6 grounds, areas, and facilities normally held out for the use of residential ~~tenants who are~~
7 using the dwelling unit as their primary residence. tenants."

8 Section 3. G.S. 42-39 is amended by adding a new subsection to read:

9 "(a1) The provisions of this Article shall not apply to vacation rentals entered into
10 under Chapter 42A of the General Statutes."

11 Section 4. G.S. 7A-272 reads as rewritten:

12 **"§ 7A-292. Additional powers of magistrates.**

13 In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in
14 civil and criminal actions, each magistrate has the following additional powers:

- 15 (1) To administer oaths;
- 16 (2) To punish for direct criminal contempt subject to the limitations
17 contained in Chapter 5A of the General Statutes of North Carolina;
- 18 (3) When authorized by the chief district judge, to take depositions and
19 examinations before trial;
- 20 (4) To issue subpoenas and capias valid throughout the county;
- 21 (5) To take affidavits for the verification of pleadings;
- 22 (6) To issue writs of habeas corpus ad testificandum, as provided in G.S.
23 17-41;
- 24 (7) To assign a year's allowance to the surviving spouse and a child's
25 allowance to the children as provided in Chapter 30, Article 4, of the
26 General Statutes;
- 27 (8) To take acknowledgments of instruments, as provided in G.S. 47-1;
- 28 (9) To perform the marriage ceremony, as provided in G.S. 51-1;
- 29 (10) To take acknowledgment of a written contract or separation agreement
30 between husband and wife; and
- 31 (11) Repealed by Session Laws 1973, c. 503, s. 9.
- 32 (12) To assess contribution for damages or for work done on a dam, canal, or
33 ditch, as provided in G.S. 156-15.
- 34 (13) Repealed by Session Laws 1973, c. 503, s. 9.
- 35 (14) If the office the clerk of superior court is closed, to accept the filing of a
36 complaint and to issue a summons in cases for expedited eviction
37 proceedings under Article 4 of Chapter 42A of the General Statutes."

38 Section 5. This act becomes effective January 1, 2000, and applies to rental
39 agreements entered into on or after that date.