

Questions and Answers on:

OWNING VACATION RENTAL PROPERTY

As an owner of real estate in a North Carolina resort location, have you ever thought of renting it to others for their vacation use? If so, you need to be aware of the North Carolina Vacation Rental Act. The Act applies to any person or entity (partnership, corporation, limited liability company, association, etc.) acting as a landlord or real estate broker in the rental or management of residential property for vacation rental purposes.

This brochure focuses on basic information that you should have if you intend to put your property on the vacation rental market.

Q: What constitutes “vacation rental property” covered by the Act?

A: It is residential property rented for vacation, leisure, or recreational purposes for fewer than ninety days to persons who have a permanent residence elsewhere to which they intend to return. It does not apply to rentals to persons renting a dwelling unit for business or employment purposes on a temporary basis.

Q: If a tenant is interested in renting my property for a vacation rental, do I need to get an agreement in writing?

A: Yes. A written “vacation rental agreement” is required! The agreement must include a clear and conspicuous notice to the tenant that the rental is covered by the Vacation Rental Act, that you or your agent may disburse a portion of the rent before the tenant occupies the property, and that you may evict the tenant using an expedited procedure. The agreement must also describe (1) how the tenant’s funds will be handled, (2) any processing or cleaning fees the tenant will be charged, (3) what the tenant can do if you or your agent cannot provide “fit and habitable premises” or a reasonable substitute, (4) information about the expedited eviction process, (5) your rights and the rights of the tenant if the vacation rental property is sold or there is a mandatory evacuation, and (6) any other obligations you and the tenant have. The North Carolina Association of REALTORS® has developed a form contract (No.411-T) that meets the requirements of the Act. But be aware that the agreement is only enforceable after the tenant signs it, or pays money to you (or your agent), or takes possession of the property.

Q: I have recently purchased a vacation rental property. Must I honor any existing vacation rental agreements for it?

A: Maybe. It depends upon when the rental is to occur. You must honor any vacation rental agreements which will end within 180 days from when you record your interest in the property with the register of deeds.

Q: How will I know if there are vacation rental agreements in place?

A: Before you enter into a contract to purchase the property, the seller must inform you of any rental

agreements affecting the property. In addition, no later than ten days after the seller transfers the property to you, the seller must give you a copy of the vacation rental agreement for each tenant, including the tenant's name and address. [Note: One copy of the vacation rental agreement is sufficient if all agreements are the same, and the seller gives you the names, addresses, rental amounts and dates of the tenancies for the tenants who executed the agreement.]

Q: As the recent purchaser of a vacation rental property, must I notify the tenants of the change in ownership?

A: Yes. No later than twenty days after the property has been transferred to you, you must advise each tenant (1) that you are the new owner and provide your name, address, and date your interest in the property was recorded, (2) whether the tenant has the right to occupy the property subject to the terms of the vacation rental agreement, and (3) whether the tenant has the right to receive a refund of any payment made by him or her. However, you are not required to give this notice if you continue to use the seller's vacation rental manager and you agree to honor the tenant's rights under his or her vacation rental agreement.

Q: What must I do to maintain the condition of my vacation rental property?

A: You must maintain the property in a "fit and habitable" condition. This means you must (1) comply with applicable building and housing codes; (2) make all repairs and do whatever is reasonably necessary to put and keep the property in a fit and habitable condition; (3) keep all common areas of the property in safe condition; (4) maintain all electrical, plumbing, sanitary, heating, ventilating, and other facilities and major appliances supplied by you in good and safe working order, and reasonably and promptly repair them when tenants notify you (or your agent) that repairs are needed; and (5) provide operable smoke detectors and CO₂ alarms.

Q: What happens if my property is not "fit and habitable" when the tenant is to occupy it?

A: Unless you substitute a reasonably comparable property in a "fit and habitable" condition, you must refund all payments made by the tenant.

Q: Can I require the tenant to pay a security deposit?

A: Yes. You can charge a deposit to cover (1) the tenant's possible nonpayment of rent, (2) damage to the premises, (3) non-fulfillment of the rental period, (4) unpaid bills which become a lien against the property due to the tenant's occupancy, (5) costs of re-renting the premises if the tenant breaches the rental agreement, (6) costs of removing and storing the tenant's property if you have to summarily eject the tenant, (7) court costs for terminating a tenancy, and (8) the amount of any unpaid phone and cable television charges that the tenant was required to pay. If you charge a security deposit, you must retain it in a North Carolina trust account throughout the tenancy. Within 45 days after the tenancy, you must either apply it as

permitted and account for it to the tenant, or refund the money to the tenant.

Q: What happens if the tenant damages my property?

A: Vacation rental tenants are responsible for all damage, defacement or removal of any property inside the rental unit that is in their exclusive control. They are not responsible for ordinary wear and tear, your acts or those of your agent, defective products, repairs you authorize, acts of third parties (other than invitees of the tenant), or natural forces.

Q: What can I do if the tenant violates the terms of the lease while occupying my property?

A: For tenants who have rented your property for thirty days or less, the Act affords you an expedited process for evicting them if they have either over-stayed their lease, materially breached a vacation rental agreement that by its terms allows you to evict them, failed to pay you rent as required, or obtained possession of your property by fraud or misrepresentation. You must give the tenant four hours notice (oral or written) to vacate the premises before instituting a legal "expedited eviction proceeding." Once the four hours have passed, you must file a complaint with the clerk of court in the county where the property is located and have a summons issued to the tenant. A law enforcement officer must serve the summons on the tenant. A hearing on the eviction will be held not sooner than twelve nor more than forty-eight hours after service, and if the court rules in your favor, the magistrate will enter a written order at the time of the hearing requiring the tenant to leave. In most cases, the tenant will be served with the order at the conclusion of the hearing. The tenant must then vacate your property within eight hours after service. If the tenant chooses to appeal, the court will impose a bond in an amount reasonably calculated to cover any rent that will come due while the tenant pursues the appeal and any other damages you may suffer as a result of your inability to honor other vacation rental agreements.

Q: If a hurricane or storm is approaching and a mandatory evacuation is ordered, am I required to refund the tenant's money?

A: Maybe. If state or local authorities order a mandatory evacuation for an area that includes your vacation rental property, the tenant must comply with the evacuation order, whether in possession of the property or not, and you must refund the rent, taxes, and any other payments for each night the tenant cannot occupy the property because of the order. [Note: You are not required to refund the rent if the tenant was offered insurance which would have covered the loss, whether or not the tenant purchases it. The insurance offered must be provided by a company authorized by the North Carolina Department of Insurance and its cost may not exceed eight percent (8%) of the total rent.]

Q: What if my tenants cannot occupy the property for personal reasons?

A: You are not responsible if the tenancy is interrupted for reasons other than a mandatory evacuation,

other official intervention, or action attributable to you. Members of the Military also have early termination rights under certain circumstances. To cover these and other possible vacation interruptions, you may wish to advise your tenants to purchase their own insurance.

Q: Should I include a statement in the vacation rental agreement describing the penalties for cancelling the rental?

A: Yes. It is generally a good idea to give the tenant advance notice of the consequences of cancellation. A vacation rental agreement may outline your cancellation policy and describe any administrative fees that will be charged, but the fees must be limited to an amount reasonably calculated to cover your actual costs of processing the tenant's cancellation of a vacation rental. Be aware that you cannot require a tenant to forfeit rent for your property if you could have re-rented it.

Q: Can I require the tenant to pay rent in advance?

A: Yes. You or your agent may require the tenant to pay in advance all or part of the rent, security deposit, or other permitted fees if the tenant authorizes you to do so in the vacation rental agreement. You must deposit the advance payment in a trust account with a licensed and federally insured depository or trust institution authorized to do business in North Carolina no later than three days after receiving the money. The vacation rental agreement must give the name and address of the depository or trust institution where the money will be held and, if you want to earn interest on the money, a provision about who will receive the interest.

Q: Once I have received and deposited the advance payments in a trust account, when can I disburse them?

A: You can disburse up to 50% of the total rent any time before the tenant occupies your property. And, if it is expressly authorized in the vacation rental agreement, you may also disburse any fees for goods or services (linen services, umbrella rentals, golf packages, etc.) you are procuring for the tenant from third parties. You may not disburse the remaining funds until the tenant occupies the property. If the tenant commits a material breach before occupancy, you may retain an amount sufficient to cover the actual damages you have suffered. And you may, of course, refund money to the tenant at any time prior to occupancy.

Q: What do I do with advance payments if I sell the property?

A: Once your interest in the property is terminated, you (and your rental agent) have thirty days to give the new owner (or the owner's agent) all advance rent paid by the tenant together with the remaining portion of any fees paid by the tenant after lawful deductions. You must also notify all tenants by mail that you have transferred ownership of the property and give them the new owner's name and address. If the tenant's

rental of the property will end more than 180 days after the new owner's interest in the property has been recorded and the new owner has chosen not to honor the tenant's lease, you must instead return the money to the tenant – not the new owner – within the thirty-day period. Remember too, that as a seller, you must inform prospective buyers of the time period when the property will be rented to future tenants, and within ten days after closing you must provide the new buyer with each tenant's name, address, and amount paid, along with a copy of the vacation rental agreement.

**THE NORTH CAROLINA
REAL ESTATE COMMISSION**

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