

## **Commission's Statement on Vacation Rental Act and Tenant Refunds Due to COVID Related Road/Bridge/Access Closures**

On March 17, 2020 Dare County closed access to visitors for reasons of public health and safety during the COVID-19 pandemic. Dare County stated that the closure does not apply to permanent residents, non-resident property owners and non-resident employees of Dare County businesses. Dare County has noted that this is **NOT** an evacuation order. Likewise, Dare County did not specify an end date. Hyde County has also announced visitor restrictions beginning Thursday, March 19, 2020. This does not apply to workers, residents, vendors, or property owners. Hyde County has noted that this is **NOT** an evacuation order. Visitors who are currently present in these counties are not required to leave. The North Carolina Real Estate Commission ("NCREC") expects further access restrictions as situations continue to develop and, as a result, will publish its position on its website as it potentially affects a significant number of North Carolina's licensed vacation rental managers and consumers as well.

The Commission is clarifying its position regarding whether a tenant's funds that are being held in trust by a broker for rental weeks affected by the access closure need to be returned to the tenant. The NCREC has historically required North Carolina licensed vacation rental brokers to refund any and all funds held in trust, less certain statutory fees or earned commissions, where access to vacation rental homes is obstructed.

Because these are not evacuation orders under N.C.G.S. 42A-36, we focused our analysis on the remaining landlord/tenant laws in the Vacation Rental Act. In the current situation, landlords (landlords are vacation rental homeowners) of vacation rental units in the affected areas cannot provide access to the units for the tenants who have pending reservations.<sup>1</sup> Moreover, access to the property is an integral part of its use and enjoyment and tenants have the legal right to the use and enjoyment of the leased property.<sup>2</sup> As a consequence, we have determined that when access to the property cannot be provided, we find that N.C.G.S. 42A-17(b) requires that the landlord and broker refund all monies paid by the tenant.

In those instances where the real estate broker may have legally disbursed up to fifty percent (50%) of the rent received to the owner as provided in G.S. 42A-16 the broker must return the funds the broker continues to hold in their trust account to the tenant. Similarly, the landlord, and not the broker, is responsible for returning to the tenant the money the landlord received as an advanced disbursement. A landlord who refuses to return money to a tenant may be subject to a civil suit by the tenant.

Finally, there may be other contractual issues relating to deductions for commissions, fees and services owed by landlords not contemplated by this paper, but that may fall under the jurisdiction of a civil and not a regulatory action or interpretation. Commission staff consulted with the North Carolina Attorney General's Consumer Protection Division before issuing this statement.

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<sup>1</sup> Whether the responsibility for the access closure lies with the landlord or with federal, state or local officials or is an Act of God is irrelevant.

<sup>2</sup> Whether the rental home itself is fit and habitable is also irrelevant, instead **access** to the rental home is the critical component of our legal analysis under these facts.