

SALES OF VACATION RENTALS

1. You manage several properties used for short term rentals. You go to check the condition of one following a tenancy and discover a “FOR SALE” sign in the yard with the name of a broker with another company. You know nothing about this and want to pull the sign from the yard. What should you do instead?
2. You have obtained a listing that is in high demand. The seller tells you that he sometimes has used the property as a vacation rental. It is not the seller’s primary residence at present. What should you ask the seller next?
3. You are driving around in the mountains with buyer-clients and come across a lovely property with a FOR SALE sign in the front yard. Your clients are very interested, as they are looking for a second home that they also could lease as a vacation rental. What questions should you ask the listing agent?

Questions:

1. What happens to advance payments received by an owner or broker-property manager for tenancies that will occur after the vacation rental property is sold?
2. Must the buyer honor leases entered into by the seller that occur after the property is transferred to the buyer?
3. What information or notices must be provided to whom by whom and when?

To answer these questions, you must be familiar with the North Carolina **Vacation Rental Act** (hereinafter **VRA**), first enacted by the General Assembly in **1999** for the purpose of “*regulating the competing interests of landlords, real estate brokers, and tenants.*” Brokers involved in residential sales and brokers providing property management services for vacation rentals should be aware of the minimum requirements and performance time frames established by these state laws when property subject to vacation rental agreements is sold. This Section will first review the relevant sections of the Vacation Rental Act and then apply those requirements to the broker involved in the sales transaction and the broker managing the vacation rentals.

Learning Objective:

After completing this section, you should be able to explain:

- seller and buyer obligations under the Vacation Rental Act upon a transfer of the property.
- how to handle early termination of the manager-broker's agency agreement.
- how to disburse trust monies, including advance rents, fees, sales taxes, and deposits, upon the termination of the agency relationship.
- the value of communication and cooperation between brokers managing or selling the same property.

VACATION RENTAL ACT - NCGS CHAPTER 42A

Applicability

The Vacation Rental Act (VRA) applies to:

1. A) any person or entity who acts as a landlord ...
or
B) a real estate broker who engages ...
2. in the management of residential property for vacation rental.

Definition

The VRA defines a “*vacation rental*” as:

1. the rental of residential property
2. for vacation, leisure or recreation purposes
3. for less than ninety (90) days
4. by a person who has a permanent place of residence to which s/he intends to return.

Residential property includes condominiums, townhomes, single-family homes, cottages, apartments or “other property devoted to residential use or occupancy ... for a definite or indefinite period.” [G.S. 42A-4(2).]

Exclusions

1. Hotels, motels, tourist camps and other lodging regulated under other state laws;
2. Temporary rentals to persons traveling for business or employment purposes;
3. Rentals to persons with no other place of primary residence; and
4. Rentals for only nominal consideration.

Vacation Rental Act Requirements as to Trust Monies

Many brokers don't realize that the Vacation Rental Act applies to *all owners of residential property used for vacation rentals* even if the owner is managing the property without the assistance of any real estate brokers. In other words, *unlicensed owners* renting their property to others for vacation purposes must comply with the VRA. The Act requires the following.

1. *All advance payments*, whether for rent, security deposit, sales tax, fees, etc. must be deposited into a *trust or escrow account* in an *insured bank or savings and loan in North Carolina within three banking days of receipt*. (Unlicensed owner-landlords are subject to this requirement too – not just real estate brokers under Real Estate License Law.)
2. Landlords/agents don't have the option of posting a bond for the security deposit.
3. Landlords/agents may not disburse any sales or occupancy tax or security deposit prior to the termination of the tenancy or material breach by the tenant *except* to refund the monies to the tenant.

What Monies May Be Released/Paid Out Prior to the Tenancy?

Only the following:

1. Administrative fees (defined below), if permitted by the applicable contracts.
2. Fees owed to third parties for goods, services or benefits procured on the tenant's behalf.
3. Not more than 50% of the total rent due for the reserved period that has been paid in advance; *the remaining fifty percent must remain in the trust/escrow account until:*
 - a) the commencement of the tenancy, or
 - b) material breach by the tenant, or
 - c) refund to the tenant, or
 - d) transfer of funds due to the termination of the owner/landlord's interest.

The law defines an “**administrative fee**” as an amount “...reasonably calculated to cover the costs of processing the tenant's reservation, transfer, or cancellation of a vacation rental.” This administrative fee typically is paid by the tenant to the broker and, *if authorized in the property management agreement*, may be retained by the broker and disbursed immediately to the broker.

Examples of #2 above, i.e., fees owed to third parties for goods, services, or benefits procured on the tenants' behalf, might include golf reservations or charter fishing trips booked on behalf of the future tenants that must be paid at the time the reservation is made.

Tenant Security Deposits

The Vacation Rental Act adopts the provisions of the Residential Tenant Security Deposit Act found in the general landlord-tenant laws (Chapter 42, Article 6) regarding a landlord's obligations and permissible deductions from the deposit with three modifications — the Vacation Rental Act:

- doesn't allow the owner to post a bond in lieu of maintaining an escrow account;
- allows the landlord to deduct the amount of any long distance or per call telephone charges and cable television charges that the tenant was obligated to pay under the lease but didn't

- pay, in addition to the permissible deductions under G.S. 42-51, e.g., nonpayment of rent, damage; and
- requires the owner to account to the tenant for the deposit within *45 days* of the termination of the tenancy.

Note too that the VRA states that *any funds not identified in the lease as either rent or a permitted fee will be considered a tenant security deposit*. No vacation rental agreement may include any clause allowing the deduction of a termination or forfeiture fee from the tenant security deposit; rather, only *actual damages* may be withheld pursuant to general residential landlord-tenant laws.

NOTE: While it is now legal to charge a “reasonable” cleaning fee in a vacation rental agreement, if for whatever reason it is not paid, the cleaning fee should not be deducted from the tenant security deposit, as that is **NOT** a deduction allowed under **G.S. 42-51**, printed at the end of this Section.

What Happens When Vacation Rental Property is Sold?

The VRA imposes the *following obligations* when residential property subject to pending but unfulfilled vacation rental agreements is sold. [G.S. 42A-19.]

1. Prior to entering into a contract to sell, the seller-owner must disclose to the prospective buyer *all time periods* during which the property is subject to a vacation lease agreement.
2. Within ten (10) days after the transfer, the grantor (seller) must disclose to the grantee (buyer) the name and address of each tenant and provide the grantee with a copy of each lease agreement.★★
3. The buyer must honor all existing lease agreements that will end within **180 days** after the transfer, defined as the recording of the deed to the buyer.
4. Tenants under signed lease agreements ending more than 180 days after the property transfer may not enforce the lease against the new owner, but they are entitled to a *refund of all advance rent and fees paid*, subject to permissible deductions, *i.e.*, administrative fee and fees to third parties for goods/services procured for the tenant.

★★ Two Exceptions

1. If the buyer chooses to retain the services of the same real estate broker who was managing the property for the seller, then the seller is *not* required to provide the buyer with copies of all lease agreements *so long as* all parties (seller, buyer, broker) agree that the broker will provide any lease information to the buyer.
2. The law also permits a seller who uses a standard lease agreement to provide the buyer “with a copy of the part of each vacation rental agreement that contains information unique to the tenancy, the amount to be paid by the tenant, and the parties’ signatures, along with one copy of the rest of the standard form vacation rental agreement ...” rather than providing complete copies of each lease agreement.

Buyer Obligations

If the buyer decides *not* to use the broker who was managing the property for the seller, then *within twenty (20) days* following the transfer the *buyer* must notify each tenant in writing:

1. of the buyer's name, address and the date the buyer's deed was recorded.
2. that state law requires that tenancies within 180 days be honored and whether the tenant has the right to occupy the property.
3. whether the tenant has the right to receive a refund of any monies paid.

Disbursing Monies in Escrow Account

For rentals ending within 180 days of the property transfer, the *seller* or his/her agent within thirty (30) days of the termination of seller's interest in the property *shall*:

1. transfer to the buyer (or his/her agent) all advance rent, sales tax and fees, minus any lawful deductions,
and
2. notify the tenant by mail of the transfer and the buyer's name and address.

For rentals ending more than 180 days after the property transfer that the buyer has *not* agreed in writing to honor, then the seller must release all advance rent and fees, minus permissible deductions, to the *tenant* within thirty days of the property transfer.

When may you disburse the tenant security deposit? Remember, the VRA adopts the Tenant Security Deposit Act found in general landlord-tenant law (Article 6, Chapter 42). That Act (G.S. 42-54) requires that upon the termination of an owner's interest in a property, whether by sale, death, assignment, etc., the owner/former landlord or person in his stead, within thirty (30) days must *either*:

1. transfer the tenant security deposit, minus any lawful deductions, to the landlord's successor in interest and mail notice of the transfer to the tenant with the transferee's name and address,
OR
2. refund the deposit to the tenant, minus any lawful deductions.

The chart on the next page summarizes an owner's obligations under state law upon the termination of his/her ownership interest regarding the transfer of advance payments and tenant security deposits received for vacation rentals occurring after the termination of the owner's interest.

Understand that ***ALL OWNERS of vacation rental property must comply with these state laws, e.g.,*** keep advance funds in an escrow account, as well as with the statutory duty to provide fit and habitable premises. The owner may also have other responsibilities to tenants imposed by the lease terms.

An owner or his/her agent must:

<i>Tenancy Occurs/Ends:</i>	<i>Advance Payments</i>	<i>Tenant Security Deposit</i>
1) Less than 180 days after transfer	Transfer to buyer within 30 days & mail tenants notice of buyer's name & address.	Transfer to buyer within 30 days & mail tenants notice of buyer's name & address.
2) More than 180 days after transfer but Buyer agrees to honor	Transfer to buyer within 30 days & mail tenants notice of buyer's name & address.	Transfer to buyer within 30 days & mail tenants notice of buyer's name & address.
3) More than 180 days after transfer that buyer won't honor	Disburse to tenant within 30 days of transfer.	Disburse to tenant within 30 days of transfer.

BROKERS MANAGING VACATION RENTALS

Are you managing vacation rental properties in North Carolina as a broker? Then you are bound not only by landlord-tenant law and the Vacation Rental Act, but by Real Estate License Law, Commission rules, your agency agreement with the owner, and the terms of the vacation lease agreement.

Release of Advance Payments?

When and to whom may a broker release advance payments received for a future rental?

The VRA *permits, but doesn't require*, a broker to disburse up to fifty percent of any rent paid in advance to the owner prior to the tenancy. ***The only other payments permitted by law prior to occupancy besides release of partial rent are the administrative fees and fees to third parties for goods, services or benefits expended on the tenants' behalf.***

A broker's *management fee* is due from the owner and most often is paid from the rent. If the broker disburses some portion of the advance rent payments, then the brokerage fee may be deducted from the advance rent payments *if earned and authorized in the property management agreement*. If the broker's policy is not to disburse any rent payments to anyone until the tenancy begins, then the broker must also wait to receive his/her brokerage fee, as it isn't an administrative fee nor a fee paid to third persons for good or services procured on behalf of the tenant.

A broker must decide *whether s/he will release advance payments* made by a tenant to the property owner prior to the beginning of the tenancy or material breach by the tenant and this issue *should be addressed in the property management agreement*. Factors that might influence the broker's decision as to any given owner or property may include:

- the duration of the relationship with the owner;
- how many properties the broker is managing for that owner;
- the owner's financial circumstances/solvency;
- how reliable the owner has been in the past in paying unexpected expenses or refunding rents paid in advance.

Each company must determine its own policy. In several areas of the state, companies don't release funds until the tenancy begins, whereas in other areas, firms collect 50% of the rent in advance (often when the tenant signs and returns the lease agreement) and the broker immediately disburses the partial rent to the owner, minus all or a portion of the broker's fee, if "earned" under the property management agreement.

1. *What if a broker's policy is to collect 50% of the total rent payment when the lease is signed with the remaining fifty percent to be paid not later than 30 days prior to the tenancy. Upon receiving the initial advance rent payment, the broker pays it to the owner, deducting the brokerage commission. Prior to the tenancy, the tenant either cancels the reservation and is due a refund or the owner ceases to own the property. What does the law require?*

Under the VRA, the owner, and thus his agent, must either transfer all advance payments and undisbursed fees to the new property owner or refund all payments, minus permissible deductions, to the tenant as applicable. However, the broker no longer has all the monies in his/her possession. In fact, the broker may have very little monies in his/her escrow account for that tenancy if the second rent payment isn't due at the time of the property transfer or refund.

This is the dilemma that each broker or brokerage company must resolve when establishing office policy. This issue should be addressed in the property management agreement and either obligate the owner to promptly refund to the broker any and all advance funds received or at least acknowledge the owner's responsibility under state law to transfer or refund the monies, as applicable. The reality, of course, is that while the management agreement defines the parties' rights and obligations, it can't compel performance. So long as people do what they've agreed to do, life is good, but when they don't, it usually requires legal action to compel performance.

2. *If it becomes necessary to transfer or refund advance payments, as between the broker and the owner, who is liable for the funds legally paid to the owner prior to the beginning of the tenancy?*

The owner bears primary responsibility because s/he is the party to the lease agreement and received the funds. The broker is merely acting as the owner's agent, standing in the shoes of the principal, but receiving neither the benefits from the lease agreement nor the liability thereunder.

3. *Who is liable for earned fees paid to the broker from advance rents prior to the tenancy?*

That answer will depend on the terms of the owner and broker's property management agreement as to when the fees are "earned" and when they may be paid. The agreement can also allocate liability to either the owner or the broker to repay brokerage fees received prior to the tenancy when all advance payments must be transferred to a grantee/successor owner or refunded to the tenant. The standard Realtor® vacation rental management agreement allows the broker to retain any "earned fees" and states that the owner must make up any deficiency.

Early Termination of Agency Agreement

A broker's property management agreement with an owner may be terminated prior to its stated expiration date for many reasons, including the voluntary or involuntary sale or transfer of the property, assignment of the owner's interest, or the owner's death or insolvency (e.g., bankruptcy, receivership).

1. *May an owner unilaterally terminate the property management agreement prior to the termination date in the agreement?*

Yes, although there may be consequences. An agent can't compel the principal to use the agent's services, if the principal chooses otherwise, but the broker may have a claim for services rendered and the lost opportunity to earn management fees if the principal prematurely terminates the management agreement without cause.

Termination Fees

2. *May the vacation property management agreement contain a termination penalty? Wait - aren't automatic termination/forfeiture fees illegal?*

Don't confuse the laws prohibiting termination or automatic forfeiture clauses in residential and vacation *leases* with such clauses in agency agreements. Previously neither Real Estate License Law nor Commission rules addressed this issue. However, as discussed briefly in Section Three, as of **July 1, 2015**, the Commission's agency rule (Rule A.0104) was amended to read:

"Every written agreement for brokerage services that includes a penalty for early termination shall set forth such a provision in a clear and conspicuous manner that shall distinguish it from other provisions of the agreement."

Thus, agency agreements *may* contain an early termination penalty *so long as* the provision is "**clear and conspicuous**," e.g., boldface, italics, fill-in-the-blank or some format that calls a person's attention to the clause. Presumably the stated termination fee, or method of calculating it, is similar to a liquidated damages clause and is in lieu of any right to sue for the lost anticipated fees.

Note: If the management agreement is not in writing or is not signed by the owner, then the broker should not be managing the property and has no claim against the owner for any fees — management or termination — and could be liable to refund any fees paid by the owner, if the owner sued the broker. Why?

Because Real Estate License Law states:

No action between a broker and the broker's client for recovery under an agreement for broker services is valid unless the contract is reduced to writing and signed by the party to be charged or by some other person lawfully authorized by the party to sign.

[G.S. 93A-13]

3. *May a seller compel a buyer to use the seller's property manager as a condition of the purchase/sales agreement to avoid paying the termination fee?*

No. The seller may request, but can't force the buyer to employ the seller's property manager. This is yet another reason for the listing broker and manager-broker to communicate. How much time remains under the existing property management agreement? Is there a termination

clause and if so, how is the termination fee calculated? Unlike lease agreements that may run with and burden the property for a period of time after transfer of ownership, *the property management agreement is a personal services contract between the owner and the broker and does not attach to the real property in any way.* In other words, a property management agreement does *not* “run with the land” and can’t be imposed on a buyer. If a seller receives an offer from a buyer who refuses to continue with the seller’s property manager, then the seller should either reject the offer or make a counteroffer with the desired condition.

Communication among Brokers: Listing, Selling, & Property Managers

The point of the opening three scenarios was to highlight the importance of communication and cooperation between and among listing agents, property managers, and buyer agents. In the first scenario, the property manager should call the listing company and/or his owner to learn what’s happening.

Owners might not tell their vacation property manager that they intend to sell the property even if they are supposed to under the property management agreement. Thus, property managers may not know that their owner is hiring another brokerage company to market the property, but *the listing company certainly should ask whether the property is being leased* and if so, the name of the broker handling the management, whether long-term or vacation rentals, as that is a ***material fact*** relating to the buyer’s right to possess the property. This is particularly true when the owner does not live in the property s/he seeks to list. ***One of a listing broker’s first calls should be to the property manager/broker.*** The listing broker will need to obtain information regarding tenancies that have not yet occurred and property showings should be coordinated with tenant occupancy. The broker-manager will need to know when the seller accepts an offer and goes under contract, and whether the broker-manager may still enter into lease agreements while the property is under contract to be sold.

Information Relevant to Listing/Selling Brokers

Listing brokers need to know:

- is the property being leased – long-term or vacation rental?
- the name and contact information of any broker managing the property;
- the dates of occupancy for *any* signed leases (i.e., contracts);*
- when the property management agreement expires;
- whether the manager will charge a termination fee and how much.

*Recall that state law requires owners to disclose this information for vacation rentals to buyers *prior to entering into a sales contract.* How can the listing broker assist his owner-client in making this disclosure if the listing agent has never requested the information, and updates, from the manager-broker? Property showings should also consider periods when the property is rented and attempt to accommodate tenants who have the right to use and occupy the property during their tenancy.

Buyer agents will want to know not only the dates of any future tenancies currently under contract, but also:

- How much advance funds has the manager-broker collected?
- Has the manager-broker paid any advance rents to the owner and if so, how much?

- Does the amount of advance rents released to the owner include or exclude the broker's fee?
- When does the property management agreement expire?
- What funds, if any, is the manager-broker holding in his escrow account for future tenancies?

Professional courtesy should dictate that listing brokers inform property managers when their owner has decided to list the rental property so they may alert tenants to the possibility of showings during their occupancy. Property managers will also need to know whether they may continue to enter into new lease agreements while the sales contract is pending and whether the buyer will continue to use their services.

Standard Forms?

The Joint Forms Task Force has created a Vacation Rental Addendum (Std. Form 2A13-T) to be attached to the standard Offer to Purchase and Contract when the property that is the subject of the sale is also used for vacation rentals. The Addendum (printed at the end of this Section) summarizes state law, each party's obligations under the law, and allows the parties to indicate whether the owner may continue or is prohibited from entering into vacation lease agreements while the purchase contract is pending.

Brokers who don't belong to a Realtor® association, whether independently or through a company, may use the Offer to Purchase and the addenda thereto that has only the North Carolina Bar Association logo, and not the NCAR logo. Realtor® members and *owners who are personally renting their property for vacation purposes* are permitted to use the NCAR created Vacation Rental Agreement (Form 411-T). (Owners personally managing vacation rentals they own may contact NCAR to inquire where to purchase the preprinted lease form.)

Brokers who are not members of any Realtor® organization *may not use Form 411-T, nor may they create their own form to use on behalf of owner-clients*, as the brokers will not be a party to the lease agreement. Additionally, state law requires that the lease contract contain certain mandatory language; accordingly, brokers should hire a knowledgeable attorney to draft a standard lease form if they are not permitted to use Form 411-T.

Trust/Escrow Account in North Carolina

NC Real Estate *License Law* [G.S. 93A-6(g)] requires a broker's trust/escrow account to be a demand deposit account in any:

- 1) federally insured depository institution,
- 2) authorized to do business in North Carolina,
- 3) that agrees to make its records available to the North Carolina Real Estate Commission.

License Law has not required a broker's escrow account to be opened in a bank or savings and loan physically located in North Carolina since January 1, 2012. **HOWEVER**, the **Vacation Rental Act** requires that all monies related to vacation rentals for properties physically located in North Carolina must be deposited into a trust/escrow account in an *insured bank or savings and loan in North Carolina within three banking days of receipt*. [G.S. 42A-15.] Although one might argue about the

precise meaning of “in North Carolina,” the safest practice is to use a bank with a physical branch in North Carolina.

Where two state laws conflict, the more restrictive prevails. Thus, brokers managing vacation rental property situated in North Carolina must open their escrow account at an insured bank or savings and loan physically located in North Carolina, regardless of where the broker’s office is located.

[NOTE: The same rule applies in long-term residential property management, but only as to the tenants’ *tenant security deposits* that must be maintained in an escrow account in an insured bank or savings and loan located in North Carolina. Rent payments from long-term tenants may be deposited in a broker’s escrow account as defined under License Law.]

SUMMARY

Brokers managing vacation rental properties ***must first have a written property management agreement with the owner before providing any brokerage services.*** Failure to timely obtain the written agreement may result in the broker forfeiting any fees received. [See G.S. 93A-13.] Brokers managing vacation rental properties:

1. should read and be familiar with the laws within the Vacation Rental Act, Chapter 42A of the North Carolina General Statutes.
2. must maintain *all funds received* in a trust or escrow account opened *in an insured bank or savings and loan in North Carolina* and must manage that trust account in accordance with License Law and Commission rules. (If the property management agreement allows the administrative fee to be paid to and retained by the broker, then it may be deposited directly into the broker/company’s operating account.)
3. must transfer all advance payments, fees (minus permissible deductions), and security deposits in the broker’s possession to a successor owner within thirty days of any change in ownership and notify the tenant in writing of the name and address of the successor owner for those tenancies ending within 180 days of the change in ownership or tenancies ending more than 180 days after transfer that the successor owner has agreed in writing to honor.
4. must refund to the tenant all advance payments, fees (minus permissible deductions), and security deposits in the broker’s possession within thirty days of any change in ownership for tenancies that the new owner declines to honor.
5. must transfer all advance rents, fees (minus permissible deductions), sales or occupancy tax, and security deposits held by the broker in escrow for future tenancies to the owner or the owner’s new broker upon the termination of the broker’s property management agreement when no transfer of ownership has occurred.

A broker should provide the accounting in #5 to the owner-former principal identifying all transferred funds within thirty days of the termination of the agency relationship. A prudent broker will also notify the tenants in writing of the amount and the name and address of the person to whom

the funds were transferred. Brokers might remind unlicensed owners that state law requires all advance payments to first be deposited into a trust or escrow account in an insured bank or savings and loan in North Carolina, other than administrative fees which the owner may retain.

The broker should not be liable to the new owner or tenant for the transfer or refund of any advance payments the broker lawfully disbursed to the owner prior to the tenancy, i.e., not more than 50% of the total rent. *Rather, the seller is liable to the new owner or tenant, as appropriate, to transfer or refund any advance rent paid to the owner.* Who is responsible for any earned fees deducted from advance rent disbursed by the broker to the owner should be specified in the property management agreement, as state law is silent on this issue.

Lastly, the Commission ***strongly recommends*** that brokers who agree to list any property that may be subject to a rental agreement (long-term or vacation) should initiate contact with the broker-property manager and share information that each may need, including the dates of any tenancies, present or future, how to schedule showings, the expiration dates of the agency agreements, whether either agreement contains a termination fee and how it is calculated, and any other information authorized by the brokers' mutual client.

2014 Disciplinary Case

A recent disciplinary action illustrates the perils of ignoring the issues discussed in this Section. Information gathered during the Commission's investigation, prompted by the buyers filing a complaint primarily against the property management company, revealed the following relevant facts.

- A residential property owned by an LLC and used as a vacation rental, had been managed by the same brokerage company for more than six years. Most lease agreements required the tenant to prepay 50% of the total rent when they returned the signed lease agreement and the balance was due 30 days prior to occupancy. The company generally released the advance rent to the owner, minus the brokerage fee.
- A couple was interested in purchasing the vacation rental for their home. Their buyer agent approached the LLC regarding a possible purchase of the property and the parties entered into a contract for the buyers to purchase the property contingent upon the buyers selling their home. The parties also agreed in the Vacation Rental Addendum that " Seller to receive and keep any advanced rental monies paid." The buyers were unable to sell their home within twelve months of going under contract, and the parties viewed the first contract as terminated.
- The LLC listed the property with a real estate broker/company in January 2013. In May 2013, having sold their residence, the same buyers made a new offer to purchase the property using the same real estate broker as before, but this time acting only as a buyer agent. Once again, the LLC-owner and the buyers entered into a contract, but without any sale contingency. The only attached addenda were a Short Sale Addendum and a Vacation Rental Addendum.

- In the Vacation Rental Addendum:
 - Paragraph 1 “Existing Vacation Rentals” was left blank;
 - Paragraph 3 prohibited seller from entering into any other lease agreements after the contract’s Effective Date;
 - Paragraph 4, “Rental Manager Information,” was left blank, even though the buyer agent knew who was managing the property.

NOTE: The Vacation Rental Addendum contains no provisions concerning the transfer or refund of advance payments, leaving only the requirements of state law specifying a former owner’s duties/obligations upon termination of his/her ownership interest.

- Within several days of going under contract, the listing agent contacted the property manager to notify it that the property was under contract and no additional bookings should be taken. The buyer agent also contacted the property management company and received a copy of the 2013 reservation schedule for the property showing all bookings for the year. The property management company asked the buyer agent to notify them of the closing date and closing attorney information so they could “send the figures to the attorney of advanced rents that need to be reimbursed to the new owners.” The property management company had stopped releasing advance rents to the owner in April/May 2013.

A complicating wrinkle then arose: the Bank holding the note on the property sold/assigned the note to an investor group/LLC who then immediately foreclosed on the property and acquired title in June, days before the first intended closing, thereby delaying the closing. Both the listing company and the buyer agent became aware of this new player, who orally agreed to sell the subject property to the buyers under the same terms as the existing contract, but the written contract was never revised. The buyer agent acknowledged in an email to the property manager that the new LLC-owner would receive rents for tenancies occurring prior to the closing, but that her buyers expected reimbursement from the brokerage company for any rents advanced to the previous owner.

The day before closing, the listing agent contacted the property manager for information regarding advance rents and was told that “there are no advance rent funds to distribute at closing.” This information was relayed both by the listing agent and the property manager to the buyers’ closing attorney, but not to the buyers’ agent or to the buyers. There was no entry on the HUD-1 regarding released advance funds, but remember, the seller is now LLC#2 that only took title in June and only received rents from tenancies occurring during its brief ownership. After closing, the buyers were unhappy to learn that the property management company wasn’t going to reimburse them for funds they had lawfully released to owner #1. Owner #2 declined to pursue reimbursement from LLC#1 for monies received for tenancies occurring after mid-June 2013, and the buyers didn’t have a claim against LLC#2 for advance funds, as it never received any.

- Outcome:**
- 1) The buyer agent, listing company and two brokers affiliated with the listing company all received stayed license suspensions that would be reduced to a reprimand if they completed certain education by a stated date, which all did.
 - 2) The case against the property management company was dismissed upon completion by its BIC of specified education.

The statute concerning permitted deductions from the tenant security deposit found in the North Carolina Tenant Security Act (Chapter 42, Article 6) adopted by the VRA is printed below.

§ 42-51. Permitted uses of the deposit.

(a) Security deposits for residential dwelling units shall be permitted only for the following:

(1) The tenant's possible nonpayment of rent and costs for water or sewer services provided pursuant to G.S. 62-110(g) and electric service pursuant to G.S. 62-110(h).

(2) Damage to the premises, including damage to or destruction of smoke alarms or carbon monoxide alarms.

(3) Damages as the result of the nonfulfillment of the rental period, except where the tenant terminated the rental agreement under G.S. 42-45, G.S. 42-45.1, or because the tenant was forced to leave the property because of the landlord's violation of Article 2A of Chapter 42 of the General Statutes or was constructively evicted by the landlord's violation of G.S. 42-42(a).

(4) Any unpaid bills that become a lien against the demised property due to the tenant's occupancy.

(5) The costs of re-renting the premises after breach by the tenant, including any reasonable fees or commissions paid by the landlord to a licensed real estate broker to re-rent the premises.

(6) The costs of removal and storage of the tenant's property after a summary ejectment proceeding.

(7) Court costs.

(8) Any fee permitted by G.S. 42-46.

(b) The security deposit shall not exceed an amount equal to two weeks' rent if a tenancy is week to week, one and one-half months' rent if a tenancy is month to month, and two months' rent for terms greater than month to month. These deposits must be fully accounted for by the landlord as set forth in G.S. 42-52. (1977, c. 914, s. 1; 1983, c. 672, s. 3; 2001-502, s. 5; 2004-143, s. 6; 2011-252, s. 3; 2012-17, s. 4; 2012-194, s. 59(a), (b).)

VACATION RENTAL ADDENDUM

Property: _____

Seller: _____

Buyer: _____

This Addendum is attached to and made a part of the Offer to Purchase and Contract ("Contract") between Seller and Buyer for the Property.

1. **Existing Vacation Rentals:** The Property is subject to vacation rental agreement(s) as defined by the Vacation Rental Act (Chapter 42A of the North Carolina General Statutes) during the following time period(s):

2. **Information to be Provided by Seller:**

- (a) Except as provided in (b) and (c) below, within ten (10) days after Closing, Seller shall disclose to Buyer each tenant's name and address and shall provide Buyer a copy of each vacation rental agreement covering the time period(s) set forth above.
- (b) In lieu of providing Buyer a copy of each such agreement, where Seller or Seller's agent utilizes a standard form vacation rental agreement, Seller may provide Buyer with a copy of the part of each such agreement that contains information unique to the tenancy (including any provisions that have been added, deleted or modified), the amount to be paid by the tenant, and the parties' signatures, along with one copy of the standard form vacation rental agreement.
- (c) Notwithstanding (a) or (b) above, the parties agree that if prior to Closing, Buyer engages Seller's rental agent to continue to manage the Property after Closing, the rental agent is authorized to provide the information required in (a) or (b) above to Buyer.

NOTE: This paragraph 2 is not intended to limit Buyer's right to review copies of any rental agreements during the Due Diligence Period or terminate this Contract prior to the expiration of the Due Diligence Period. If Buyer desires to review copies of the vacation rental agreements prior to Closing, it is recommended that Buyer obtain copies of the rental agreements in sufficient time to allow review of the agreements prior to the expiration of the Due Diligence Period.

3. **Additional Vacation Rentals: Check only ONE of the following options:**

- Seller may enter into additional vacation rental agreements after the Effective Date of this Contract, provided that such agreements shall be on similar terms as the Property is currently rented. This authorization shall not constitute Buyer's agreement to honor any such agreements that end more than 180 days after Closing. Seller shall disclose to Buyer information concerning any such additional agreements in accordance with the applicable provision of paragraph 2 above.
- Seller may not enter into additional vacation rental agreements after the Effective Date of this Contract.

4. **Rental Manager Information:** If the Property is being managed for Seller, the name, address and telephone number of the rental manager is as follows: _____

NOTE: The Vacation Rental Act contains provisions that apply to the voluntary transfer of property used for vacation rentals, including, but not limited to, the following:

- Prior to entering into any contract of sale, the Seller is required to disclose to the Buyer the time periods that the property is subject to a vacation rental agreement.
- Buyer will take title subject to vacation rental agreements that end not later than 180 days after closing; if vacation rental agreements end more than 180 days after closing, those tenants have no rights to enforce the terms of the vacation rental agreements unless Buyer agrees in writing to honor them.
- Tenants are entitled to a refund of any payments for vacation rental agreements not so honored by Buyer.



This form jointly approved by:
North Carolina Bar Association
North Carolina Association of REALTORS®, Inc.



STANDARD FORM 2A13-T
Revised 7/2014
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Buyer initials _____ Seller initials _____

- Not later than twenty (20) days after closing, the Buyer or the Buyer’s agent shall (i) notify each tenant in writing of the property transfer, the Buyer’s name and address, and the date the Buyer’s interest was recorded; (ii) 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 Vacation Rental Act; and (iii) advise each tenant of whether he or she has the right to receive a refund of any payments made by tenant. HOWEVER, if Buyer engages as Buyer’s broker and rental agent for the Property the broker who procured the tenant’s vacation rental agreement for Seller, Buyer shall have no obligation under (i), (ii) and (iii) within this paragraph with regard to those tenants whose vacation rental agreements must be honored under the Vacation Rental Act or with regard to those tenants whose vacation rental agreements Buyer has agreed in writing to honor.

This NOTE is provided for informational purposes only and does not create any contractual obligations between Buyer and Seller or Buyer and tenant.

IN THE EVENT OF A CONFLICT BETWEEN THIS ADDENDUM AND THE CONTRACT, THIS ADDENDUM SHALL CONTROL, EXCEPT THAT IN THE CASE OF SUCH A CONFLICT AS TO THE DESCRIPTION OF THE PROPERTY OR THE IDENTITY OF THE BUYER OR SELLER, THE CONTRACT SHALL CONTROL.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

Date: _____	Date: _____
Buyer: _____ (SEAL)	Seller: _____ (SEAL)
Date: _____	Date: _____
Buyer: _____ (SEAL)	Seller: _____ (SEAL)
Entity Buyer: _____	Entity Seller: _____
(Name of LLC/Corporation/Partnership/Trust/etc.)	(Name of LLC/Corporation/Partnership/Trust/etc.)
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____