

Commission’s Statement on Vacation Rental Act and Tenant Refunds Due to Governmental Restrictions Resulting From Hurricane Isaias

On August 4, 2020, Hurricane Isaias made landfall near Ocean Isle Beach, North Carolina, creating power outages, infrastructure damage and utility disruption in surrounding areas. The severity of damage resulted in mandatory evacuations and extended supplemental government restrictions on vacation rentals to accommodate ongoing repairs to affected infrastructure and utilities.

After numerous requests for guidance, the North Carolina Real Estate Commission (“NCREC”) is publishing its position on refunds that may be due to tenants as a result of this disruption for the benefit of its 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 mandatory evacuations and/or other supplemental government restrictions should 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.

In the event a vacation rental property is located in an area covered by a mandatory evacuation, N.C.G.S. 42A-36 controls. In such cases, a tenant is not entitled to a refund if (i) prior to the tenant taking possession of the property, the tenant refused insurance offered by the landlord or real estate broker that would have compensated the tenant for losses or damages resulting from loss of use of the property due to a mandatory evacuation order; or (ii) the tenant purchased insurance offered by the landlord or real estate broker. Refunds due under this provision may be prorated if the tenant took possession of the property prior to the mandatory evacuation but the vacation was interrupted by the order for a mandatory evacuation.

In those cases where the vacation rental properties are located in areas not subject to a mandatory evacuation order, but tenants are denied access as the result of some other supplemental government restriction, such as a ban on vacation rentals, funds held in trust must be returned.¹ Access to the property is an integral part of its use and enjoyment and tenants have the legal right to use and enjoy the leased property.² As a consequence, we have determined that where 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 analysis, but that may fall under the jurisdiction of a civil and not a regulatory action or interpretation. In a previous situation, Commission staff consulted with the North Carolina Attorney General’s Consumer Protection Division and we find that analysis to be consistent with this statement.

¹Whether 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.

²Whether 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.