

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 1999**

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SENATE BILL 974\*  
Commerce Committee Substitute Adopted 4/27/99

Short Title: Vacation Rental Act.

(Public)

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Sponsors:

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Referred to:

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April 15, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT REGULATING THE RENTAL OF RESIDENTIAL PROPERTY FOR  
3 VACATION, LEISURE, OR RECREATION PURPOSES.

4 The General Assembly of North Carolina enacts:

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

6 **"CHAPTER 42A.**  
7 **"VACATION RENTAL ACT.**  
8 **"ARTICLE 1.**  
9 **"VACATION RENTALS.**

10 **"§ 42A-1. Title.**

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

12 **"§ 42A-2. Purpose and scope of act.**

13 The General Assembly finds that the growth of the tourism industry in North Carolina  
14 has led to a greatly expanded market of privately owned residences that are rented to  
15 tourists for vacation, leisure, and recreational purposes. Rental transactions conducted by  
16 the owners of these residences or licensed real estate brokers acting on their behalf  
17 present unique situations not normally found in the rental of primary residences for long  
18 terms, and therefore make it necessary for the General Assembly to enact laws regulating  
19 the competing interests of landlords, real estate brokers, and tenants.

1 **"§ 42A-3. Application; exemptions.**

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

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

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

9 (2) Rentals to persons temporarily renting a dwelling unit when traveling  
10 away from their home for business or employment purposes.

11 (3) Rentals to persons having no other place of permanent residence.

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

13 **"§ 42A-4. Definitions.**

14 The following definitions apply in this Chapter:

15 (1) Residential property. – An apartment, condominium, single-family  
16 home, townhouse, cottage, or other property that is devoted to  
17 residential use or occupancy by one or more persons for a definite or  
18 indefinite period.

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

22 (3) Vacation rental agreement. – A written agreement between a landlord  
23 or his or her real estate broker and a tenant in which the tenant agrees to  
24 rent residential property belonging to the landlord for a vacation rental.

25 **"ARTICLE 2.**

26 **"VACATION RENTAL AGREEMENTS.**

27 **"§ 42A-10. Written agreement required.**

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

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

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

35 (3) The tenant's possession of the property after the tenant's receipt of the  
36 agreement.

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

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

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

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

- 15 (1) The manner in which funds shall be received, deposited, and disbursed  
16 in advance of the tenant's occupancy of the property.
- 17 (2) The imposition of any nonrefundable charges.
- 18 (3) The applicability of expedited eviction procedures.
- 19 (4) A description of the obligations of the landlord and tenant as provided  
20 by this Chapter.

### 21 "ARTICLE 3.

#### 22 "HANDLING AND ACCOUNTING OF FUNDS.

##### 23 "§ 42A-15. Trust account uses.

24 A landlord or real estate broker may require a tenant to pay all or part of any required  
25 rent, security deposit, or other fees permitted by law in advance of the commencement of  
26 a tenancy under this Chapter if advance payments are expressly authorized in the  
27 vacation rental agreement. If the tenant is required to make any advance payments, other  
28 than a security deposit, whether the payment is denominated as rent or otherwise, the  
29 landlord or real estate broker shall deposit the advance payments in a trust or escrow  
30 account in an insured bank or savings and loan association in North Carolina no later than  
31 three banking days after the receipt of the advance payments. Advance payments  
32 deposited in a trust account shall not earn interest unless the landlord and tenant agree in  
33 the vacation rental agreement that the payments may be deposited in an interest-bearing  
34 account. The landlord and tenant shall also provide in the agreement to whom the  
35 accrued interest shall be disbursed.

##### 36 "§ 42A-16. Advance payments uses.

37 (a) A landlord or real estate broker shall not disburse an amount greater than fifty  
38 percent (50%) of the gross rent prior to the occupancy of the property by the tenant, but  
39 may disburse any nonrefundable fees to third parties to pay for goods, services, or  
40 benefits procured by the landlord or real estate broker for the benefit of the tenant if the  
41 disbursement is expressly authorized in the vacation rental agreement. The remaining  
42 funds shall be maintained in a trust account and may not be disbursed until the  
43 occurrence of one of the following:

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

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

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

7       (b) Funds collected for sales or occupancy taxes and tenant security deposits shall  
8 not be disbursed from the trust or escrow account prior to occupancy of the property by  
9 the tenant, except as a refund to the tenant.

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

14 **"§ 42A-17. Accounting; reimbursement; nonrefundable fees.**

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

20       (b) If, at the time the tenant is to begin occupancy of the property, the landlord or  
21 real estate broker cannot provide the property in a fit and habitable condition or substitute  
22 a reasonably comparable property in such condition, the landlord or real estate broker  
23 shall refund to the tenant all payments made by the tenant, except any nonrefundable fees  
24 permitted in subsection (c) of this section.

25       (c) A vacation rental agreement may provide that the following fees shall be  
26 nonrefundable:

27           (1) A fee, the amount of which shall be provided in the agreement,  
28 reasonably calculated to cover the costs of processing the tenant's  
29 reservation, transfer, or cancellation of a vacation rental.

30           (2) A fee equaling the actual cost of services, goods, or benefits to be  
31 rendered to the tenant by a third party.

32 **"§ 42A-18. Applicability of the Residential Tenant Security Deposit Act.**

33       (a) Except as may otherwise be provided in this Chapter, all funds collected from a  
34 tenant and not identified in the vacation rental agreement as occupancy or sales taxes,  
35 nonrefundable fees, or advance rent payments shall be considered a tenant security  
36 deposit and shall be subject to the provisions of the Residential Tenant Security Deposit  
37 Act, as codified in Article 6 of Chapter 42 of the General Statutes. In addition to the  
38 permitted uses of tenant security deposit monies as provided in G.S. 42-51, a landlord or  
39 real estate broker may, after the termination of a tenancy under this Chapter, deduct from  
40 any tenant security deposit the amount of any telephone calls or other utility charges that  
41 are the obligation of the tenant under the vacation rental agreement and are left unpaid by  
42 the tenant at the conclusion of the tenancy. The landlord or real estate broker shall apply,

1 account for, or refund tenant security deposit monies as provided in G.S. 42-51 within 45  
2 days following the conclusion of the tenancy.

3 (b) A vacation rental agreement shall not contain language compelling or  
4 permitting the automatic forfeiture of all or part of a tenant security deposit in case of  
5 breach of contract by the tenant, and no such forfeiture shall be allowed. The vacation  
6 rental agreement shall provide that a tenant security deposit may be applied to actual  
7 damages caused by the tenant.

8 **"§ 42A-19. Transfer of property subject to a vacation rental agreement.**

9 (a) The grantee of residential property voluntarily transferred by a landlord who  
10 has entered into a vacation rental agreement for the use of the property shall take his or  
11 her title subject to the vacation rental agreement if the vacation rental is to begin and end  
12 not later than 180 days after the grantee's interest in the property is recorded in the office  
13 of the register of deeds. The landlord or real estate broker shall disclose to the grantee  
14 the tenant's name and address and shall provide the grantee with a copy of the vacation  
15 rental agreement. Within 10 days after the recording of the grantee's interest in the  
16 property, the grantee shall:

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

19 (2) Advise the tenant of his or her right to occupy the property subject to  
20 the terms of the vacation rental agreement.

21 (3) Advise the tenant of his or her right to receive a refund of any payments  
22 made by him or her.

23 If the vacation rental is to end more than 180 days after the recording of the grantee's  
24 interest, the tenant shall have no right to enforce the terms of the agreement unless the  
25 grantee has agreed in writing to honor such terms, but the tenant shall be entitled to a  
26 refund of any advance payments made by him or her.

27 (b) If, prior to the tenant's occupancy of the property, the landlord's interest in the  
28 property is involuntarily transferred to another, the landlord shall refund to the tenant  
29 within 60 days after the transfer any advance payments made by the tenant.

30 (c) The failure of a landlord to comply with the provisions of this section shall  
31 constitute an unfair trade practice in violation of G.S. 75-1.1.

32 **"ARTICLE 4.**

33 **"EXPEDITED EVICTION PROCEEDINGS.**

34 **"§ 42A-23. Grounds for eviction.**

35 (a) Any tenant who leases residential property under this Chapter for 30 days or  
36 less may be evicted and removed from the property in an expedited eviction proceeding  
37 as provided in this Article if the tenant does one of the following:

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

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

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

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

1 (b) Only the right to possession, including abandoned property, damages to the  
2 property, rights to setoffs for breach of contract, and other similar rights shall be relevant  
3 in an expedited eviction proceeding. All other issues related to the rental of the  
4 residential property shall be presented in a separate civil action.

5 **"§ 42A-24. Expedited eviction.**

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

10 (b) An expedited eviction proceeding shall commence with the filing of a  
11 complaint and issuance of summons in the county where the property is located. If the  
12 office of the clerk of superior court is closed, the complaint shall be filed with, and the  
13 summons issued by, a magistrate. The service of the summons and complaint for  
14 expedited eviction shall be made by a sworn law enforcement officer on the tenant  
15 personally or by posting a copy of the summons and complaint on the front door of the  
16 property. Return of service shall be promptly made by the law enforcement officer to the  
17 magistrate. A hearing on the expedited eviction shall be held before a magistrate in the  
18 county where the property is located not sooner than 12 hours after service upon the  
19 tenant and no later than 48 hours after such service.

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

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

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

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

27 (4) The landlord or real estate broker has given notice to the tenant to  
28 vacate as a result of the breach.

29 The rules of evidence shall not apply in an expedited eviction proceeding, and the court  
30 shall allow any reasonably reliable and material statements, documents, or other exhibits  
31 to be admitted as evidence.

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

40 **"§ 42A-25. Appeal.**

41 A tenant or landlord may appeal a court order issued pursuant to G.S. 42A-24(d)  
42 to district court. A tenant may petition the district court to stay the eviction  
43 order and shall post a cash or secured bond with the court. The amount of the bond shall

1 be an estimate of the rent that will become due while the tenant is prosecuting the appeal,  
2 reasonable damages that the landlord may suffer, including damage to property and  
3 damages arising from the inability of the landlord or real estate broker to honor other  
4 vacation rental agreements due to the tenant's possession of the property, and the costs of  
5 the appeal to the landlord or real estate broker.

6 **"§ 42A-26. Violation of court order.**

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

13 **"§ 42A-27. Penalties for abuse.**

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

19 **"ARTICLE 5.**

20 **"LANDLORD AND TENANT DUTIES.**

21 **"§ 42A-31. Landlord to provide fit premises.**

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

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

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

40 **"§ 42A-32. Tenant to maintain dwelling unit.**

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

- 42 (1) Keep that part of the property which he or she occupies and uses as  
43 clean and safe as the conditions of the property permit and cause no

- 1            unsafe or unsanitary conditions in the common areas and remainder of  
 2            the property that he or she uses.  
 3            (2)    Dispose of all ashes, rubbish, garbage, and other waste in a clean and  
 4            safe manner.  
 5            (3)    Keep all plumbing fixtures in the property or used by the tenant as clean  
 6            as their condition permits.  
 7            (4)    Not deliberately or negligently destroy, deface, damage, or remove any  
 8            part of the property or render inoperable the smoke detector provided by  
 9            the landlord or knowingly permit any person to do so.  
 10          (5)    Comply with all obligations imposed upon the tenant by current  
 11          applicable building and housing codes.  
 12          (6)    Be responsible for all damage, defacement, or removal of any property  
 13          inside the property that is in his or her exclusive control unless the  
 14          damage, defacement, or removal was due to ordinary wear and tear, acts  
 15          of the landlord or his or her agent, defective products supplied or repairs  
 16          authorized by the landlord, acts of third parties not invitees of the  
 17          tenant, or natural forces.  
 18          (7)    Notify the landlord of the need for replacement of or repairs to a smoke  
 19          detector. The landlord shall annually place new batteries in a battery-  
 20          operated smoke detector, and the tenant shall replace the batteries as  
 21          needed during the tenancy. Failure of the tenant to replace the batteries  
 22          as needed shall not be considered negligence on the part of the tenant or  
 23          the landlord.

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

## "ARTICLE 6.

### "GENERAL PROVISIONS.

#### "§ 42A-36. Mandatory evacuations.

29          If State or local authorities order a mandatory evacuation of an area that includes a  
 30          residential property subject to a vacation rental, the tenant in possession of the property  
 31          shall comply with the evacuation order and, upon compliance, shall be entitled to a  
 32          refund from the landlord of the prorated rent for each day that the tenant was unable to  
 33          occupy the property because of the evacuation order. The tenant shall not be entitled to a  
 34          refund if: (i) prior to the tenant taking possession of the property, the tenant refused  
 35          insurance offered by the landlord or real estate broker that would have compensated him  
 36          or her for losses or damages resulting from loss of use of the property due to a mandatory  
 37          evacuation order; or (ii) the tenant purchased insurance offered by the landlord or real  
 38          estate broker. The insurance offered shall be provided by an insurance company duly  
 39          authorized by the North Carolina Department of Insurance, and the cost of the insurance  
 40          shall not exceed eight percent (8%) of the gross rent charged for the vacation rental.

#### "§ 42A-37. Late fees.

42          The provisions of Chapter 42 pertaining to the imposition of late fees shall not apply  
 43          to vacation rentals under this Chapter."



1                   Section 2. This act becomes effective January 1, 2000, and applies to rental  
2 agreements entered into on or after that date.