

Protecting Your Paradise

The Vacation Rentals Lawyer's Guide to Navigating the NC Vacation Rental Act



Student Manual

About the Author



Jeff Malarney, Attorney

Jeff Malarney is a highly accomplished individual who possesses a diverse range of experiences in the fields of law, real estate, and business. He is a graduate of Wake Forest School of Law, having obtained his degree in 1991. Jeff served as a Commander in the United States Navy Judge Advocate General's Corps, where he received numerous medals in recognition of his exceptional service, including multiple Navy and Marine Corps Commendation, Achievement, and Global War on Terrorism medals.

Jeff's impressive career has spanned across various fields. He has served as the General Counsel for Twiddy & Company and has been a partner in several law firms, including Malarney & McCown, PLLC, where he practices civil litigation and real estate law. Additionally, Jeff founded H2OBX Waterpark, which was voted in 2020 as one of America's top 10 national waterparks. He is also a partner in HOM Development, LLC, which specializes in mining and residential development in Dare, Currituck, and Tyrrell Counties. Furthermore, he is the principal in Pro 1 Pest Control, a premier provider of pest control on the Outer Banks.

Apart from his successful ventures, Jeff is also a licensed real estate broker and holds an insurance license. He is currently serving his fourth term with the North Carolina Real Estate Commission, where he previously held the position of Chairman. Jeff is happily married to the Honorable Amber Davis Malarney, a North Carolina District Court Judge, and is a proud father to Cullen and Lainy Malarney.



READ IMMEDIATELY UPON CHECKING IN

Basic CE Requirement (21 NCAC 58A.1702)

To maintain a license on active status every licensee must complete **eight (8) hours of continuing education each license year**. Provisional brokers and brokers who are NOT Brokers-in-Charge or Broker-in-Charge eligible must complete the **General Update** course plus a Commission-approved four (4) hour elective course. Brokers who ARE Brokers-in-Charge or Broker-in-Charge eligible must complete the **BIC Update** course each year beginning with the first full license year after the license year in which the broker declared himself/herself a broker-in-charge plus a Commission-approved four (4) hour elective course. The content of both **Update** courses changes each year.

Important Points to Note

- Newly licensed Brokers (Provisional Brokers) do NOT need to take any CE prior to their **first license renewal** but must satisfy the CE requirement prior to their **second license renewal**.
- A course may not be taken for CE credit twice in the same license period. Make sure you have not already taken this course during the current license period.
- If your license is **inactive**, you should check with the Commission to ascertain the amount of CE you need to activate your license.

Attendance Requirement

In order to receive CE credit for a course, students must attend the entire scheduled class session. Education Providers and instructors may, on an individual basis, excuse a student for good reason for up to 10% of the scheduled class session (20 minutes for

a 4-hour class); however, a student must attend a minimum of 90% of the scheduled class in order to receive a course completion certificate and CE credit. No exceptions to the 90% attendance requirement are permitted for any reason. **However**, a student **may NOT miss** any of the last 20 minutes of any 4-hour CE course session.

Student Participation Requirement

To assure the mandatory continuing education program will be of high quality, students must comply with the following participation standards:

A student shall direct his active attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction which are distracting to other students or the instructor, or which otherwise disrupt the orderly conduct of a class. **Examples of Prohibited Conduct:** Sleeping; reading a newspaper or book; performing office work; carrying on a conversation with another student; making or receiving a phone call on a cellular phone; receiving a page on a pager that makes a noise; loudly rattling or shifting papers; or repeatedly interrupting and/or challenging the instructor in a manner that disrupts the teaching of the course.

Education Providers and instructors will enforce student participation standards. Education Providers will NOT issue a course completion certificate to Broker who violates the standards and will report inappropriate behavior to the Commission.

Course Completion Reporting

Education Providers are responsible for reporting course completion information to the Commission via the Internet within **7 days of course completion**. Brokers are responsible for assuring that the license number provided to the school is correct.

Address comments/complaints on courses, instructors, and/or sponsors to:

Education Approval & Renewal Officer

North Carolina Real Estate Commission

P.O. Box 17100

Raleigh, North Carolina 27619-7100

(919) 875-3700

EDUC@NCREC.gov

Certificates of Course Completion

Education Providers will provide each Broker who satisfactorily completes an approved CE course a Certificate of Completion on a form prescribed by the Commission. The certificate should be retained as the Broker's personal record of course completion. **Do not submit to the Commission unless the Commission specifically requests it.** Check your current CE credits online at www.NCREC.gov.

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NOTE: Sources utilized in this course include the *North Carolina Real Estate Commission Real Estate Manual (Chapter 16)*, The North Carolina Real Estate Commissions Publication *License Law and Commission Rules*, the North Carolina Real Estate Commission *Real Estate Bulletins*, and the North Carolina Association of REALTORS® Legal Hotline, Manuals, Q&A's & NAR's Professional Standards.

PURPOSE OF THE COURSE:

The economic impact from Tourism in North Carolina is the third largest component on the North Carolina economy. In 2021 the economic impact was \$28.9 Billion Dollars and in 2022 it exceeded \$29.4 Billion Dollars. The Tourism dollars spent includes vacation rentals which further includes owning and leasing vacation rental properties. Due to the fiscal impact coupled with the complexities of vacation rentals, the North Carolina General Assembly enacted G.S. 42A (NC Vacation Rental Act) in 1999. Because Vacation Rentals include buying, selling, and leasing these vacation rentals, which are real estate transactions, the NCREC is charged with regulating brokers who are engaged in vacation rentals or transactions involving vacation rental properties. This course is specifically designed to help brokers better understand, and be in compliance with, the NC Vacation Rental Act coupled with the NCREC Rules, and other laws and rules when practicing real estate brokerage in the vacation rental business in NC.

COURSE OBJECTIVES: The aim of this course is to equip brokers with the necessary knowledge, skills, and competence to comprehend the NC Vacation Rental Act (42A) in conjunction with the relevant Real Estate License Law (93A) and NCREC Rules that apply to vacation rental transactions. By gaining this understanding, brokers will be better equipped to practice vacation rental brokerage and protect consumers through their transactions and affiliations with firms. The course covers various legal issues related to laws, regulations, and policies governing NC Vacation Rental transactions. Additionally, brokers will gain a better understanding of their duties and responsibilities pertaining to the NC Vacation Act and the real estate properties involved in these transactions.

COURSE OVERVIEW: The course material is centered on the NC Vacation Rental Act (G.S. 42A) and utilizes examples from Case Law to instruct brokers on how to effectively guide their Landlord and Seller Clients in managing and preparing their vacation rental properties for current and future rentals, all while adhering to Local, State, Federal, and other relevant laws, regulations, and rules governing vacation rentals in North Carolina.

How to Get the Most from this Course

- 1) **ASK QUESTIONS.** If you have a question, ask away! If you have an in-depth situation or issue you would like to discuss, please approach the instructor during breaks or after the course. Even though your instructor has a substantial amount of subject knowledge, he is limited to presenting the course information in the allotted course time. So, be respectful of his time and your fellow students' time when asking questions.
- 2) **TAKE NOTES.** Why let even one good idea get away? Taking notes will help you concentrate and organize your thoughts. Plus, they will allow you to take a "refresher" anytime in the future. **Hint:** The course materials are YOURS; make your notes clear as you write them. Few people ever have the luxury of rewriting their notes, no matter how good their intentions.
- 3) **RELATE WHAT YOU LEARN TO YOURSELF.** Do not settle for "abstract" knowledge. Have your current problems, conflicts, and interests foremost in your mind. As you learn new approaches and techniques, relate them to your own situation. Apply the NC Vacation Rental Act, the Real Estate License Law and NC Real Estate Commission Rules to your everyday brokerage service.
- 4) **MAKE A COMMITMENT TO REVIEW YOUR NOTES.** Take the time to review the notes you took. Concern yourself with what you can learn to improve your effectiveness in applying your newly found knowledge to every residence you list, sell, or lease from now on.
- 5) **BE PREPARED.** When preparing yourself or the properties you and your firm represent, be careful to note the appropriate details of your vacation rental properties by inspecting those vacation rental properties carefully. Assemble a comprehensive list of questions to ask the buyers, sellers, landlords and tenants about the relevant issues that will help facilitate a thoughtful vacation rental transaction that benefit your clients and customers in the normal course of your vacation rental real estate brokerage practice.

Section 1

ACCESSING THE LEGAL SYSTEM

Learning Objective:

By the end of this Section, brokers will be able to: Identify the NC court systems including type of courts, jurisdictional limits and the legal matters managed. Describe the legal process of handling disputes in vacation rentals. Determine the appropriate court for filing lawsuits or seeking legal redress.

A BROKER'S GUIDE TO THE NORTH CAROLINA COURT SYSTEM

North Carolina vacation rental managers should be familiar with the various courts in North Carolina to manage legal issues related to their business. This includes disputes with guests or property owners, contract disputes, or zoning violations. Familiarity with the different types of courts and their jurisdictional limits can help vacation rental managers navigate the legal system more effectively and know which court has the authority to handle their specific legal matter. For instance, if a vacation rental manager needs to file a lawsuit against a guest for property damage, they may need to do so in North Carolina Magistrates Court if the damages are below \$10,000. Likewise, a vacation rental manager may file for an expedited eviction in the district court of the county where the vacation rental property is located.

North Carolina has a Magistrates Court, which is a lower court that operates under simplified procedures and rules of evidence that are less strict than those of higher courts. The court handles small claims, traffic violations, and misdemeanors. Hearsay evidence is allowed in Magistrate's Court as long as it is relevant and reliable, and the court may consider any evidence that it deems relevant and trustworthy, regardless of whether it would be admissible in higher courts.

The District Court handles a broad range of cases, including small claims, traffic violations, and misdemeanors. The court has two main divisions: the civil division, which resolves disputes involving less than \$25,000, and the criminal division, which deals with misdemeanors, DWI charges, and other minor criminal offenses. In District Court, the rules of evidence are enforced to ensure that evidence presented in court is reliable, relevant, and fair to all parties involved in the case. District Court judges are responsible for enforcing the rules of evidence and ensuring that evidence is admitted or excluded based on those rules. Hearsay evidence is not allowed and is inadmissible. Letters, emails, and texts that are allowable in Magistrate's Court will generally not be allowed in District Court.

Superior Court is considered the trial court of general jurisdiction, empowered to hear all types of cases, except those reserved for other courts. Cases in Superior Court typically involve complex legal issues, such as felonies, divorces, and significant civil disputes.

Finally, there is the Appellate Court, which consists of the Court of Appeals and the Supreme Court. The Court of Appeals serves as the intermediate appellate court, hearing cases appealed from the District and Superior Courts. The Supreme Court is the highest court in the state and serves as the court of last resort. It primarily hears cases involving constitutional or legal questions of significant public interest.

Understanding the differences between these courts and the role they play in the legal system is vital to effectively navigate legal issues that may arise. It is essential for everyone, whether a lawyer or a citizen, to comprehend the North Carolina court system to protect their rights and seek justice.

Section 2

The NC Vacation Rental Act

Learning Objective:

By the end of this course, brokers will be able to identify and explain the purpose of the Vacation Rental Act, as well as its application and exemptions.

The purpose of the Vacation Rental Act (“VRA”)

The growth of the tourism industry in North Carolina has resulted in an increase in privately owned residences being rented out to tourists for vacation, leisure, and recreational purposes. The rental transactions conducted by these owners or licensed real estate brokers present unique situations that require laws to regulate the competing interests of landlords, real estate brokers, and tenants. The act, enacted by the General Assembly of NC in 1999 under section 1 of the law to address these concerns and establish guidelines for the rental of vacation properties in NC. Its purpose is to provide protections for both landlords and tenants and ensure fair and safe practices in vacations rentals.

The VRA Application and Exemptions

This VRA applies to any person, partnership, corporation, limited liability company, association, or other business entity that acts as a landlord or real estate broker engaged in the rental or management of residential property for vacation rental as defined in this Chapter. G.S. 160D-1117 applies to properties covered under this Chapter. (b) This Chapter does not apply to any of the following: (1) Lodging provided by hotels, motels, tourist camps, and other places subject to regulation under Chapter 72 of the General Statutes. (2) Rentals to persons temporarily renting a dwelling unit when traveling away from their primary residence for business or employment purposes. (3) Rentals to persons having no other place of primary residence. (4) Rentals for which no more than nominal consideration is given. (1999-420, s. 1; 2019-73, s. 1; 2022-62, s. 4.)

Example: Let's say that a group of colleagues is traveling to Charlotte for a week-long business conference. They decide to book a rental property through a popular vacation rental website. However, they soon find out that the property they booked is not covered by the vacation rental regulations in that city, as it falls under the exemptions listed in the law.

The first exemption states that hotels, motels, and other similar lodgings fall under the regulation of Chapter 72 of the General Statutes. Therefore, the hotel where the conference is being held is not subject to the vacation rental regulations, as it is already regulated under Chapter 72.

The second exemption states that rentals to persons temporarily renting a dwelling unit when traveling away from their primary residence for business or employment purposes are not covered by the vacation rental regulations. If the colleagues had reserved travelers on business trips, then that property would also be exempt from the regulations (there is an exemption under the VRA for business travelers).

The third exemption states that rentals to persons having no other place of primary residence are not subject to the vacation rental regulations. This could include individuals who are temporarily homeless or those who are in between housing situations.

Finally, the fourth exemption states that rentals for which no more than nominal consideration is given are also exempt. This could include situations where a property owner allows a friend or family member to stay in their property for a short period of time, without charging them rent or charging only a minimal amount.

In summary, these exemptions in the law are in place to ensure that the regulations on vacation rentals do not impede on the operations of hotels, motels, and other regulated lodging facilities, as well as to provide exceptions for individuals who are traveling for work or who are in a difficult housing situation.

Quiz #1:

1. True or False - This Chapter applies to any business entity that acts as a landlord or real estate broker for long-term residential rentals.
2. True or False - Rentals to persons having no other place of primary residence are covered under this Chapter.
3. True or False - Rentals for which no more than nominal consideration is given are exempt from this Chapter.

Definitions of Terms under the VRA

The following definitions apply: (1) Advanced payments. – All payments made by a tenant in a vacation rental agreement to a landlord or the landlord's real estate broker prior to occupancy for the purpose of renting a vacation rental property for a future period of time as specified in the vacation rental agreement. (1a) Landlord. – An owner of residential property offered for lease as a vacation rental with or without the assistance of a real estate broker. (1b) through (1f) Reserved. (1g) Real estate broker. – A real estate broker as defined in G.S. 93A-2(a). (2) Residential property. – An apartment, condominium, single-family home, townhouse, cottage, or other property that is devoted to residential use or occupancy by one or more persons for a definite or indefinite period. (3) Vacation rental. – The rental of residential property for vacation, leisure, or recreation purposes for fewer than 90 days by a person who has a place of permanent residence to which he or she intends to return. (4) Vacation rental agreement. – A written agreement between a landlord or the landlord's real estate broker and a tenant in which the tenant agrees to rent residential property belonging to the landlord for a vacation rental. (1999-420, s. 1; 2016-98, s. 1.1; 2017-102, s. 13.1.)

Quiz #2:

1. True or False - According to the Chapter, "Advanced payments" refer to all payments made by a tenant after occupancy of the vacation rental property.
2. True or False - A real estate broker is defined as a real estate broker as defined in G.S. 93A-2(a).

Section 3

Vacation Rental Contracts

Learning Objective:

By the end of this Section, brokers will be able to: Identify the requirements of a valid and enforceable vacation rental agreement in NC. List statutory accounting principles including the Tenant Security Act requirements. Brokers will be able to explain the consequences of failing to comply with the provisions of the VRA.

Requires a Written Agreement

A Written agreement required: (a) A landlord or real estate broker and tenant shall execute a vacation rental agreement for all vacation rentals subject to the provisions of this Chapter. No vacation rental agreement shall be valid and enforceable unless the tenant has accepted the agreement as evidenced by one of the following: (1) The tenant's signature on the agreement. (2) The tenant's payment of any monies to the landlord or real estate broker after the tenant's receipt of the agreement. (3) The tenant's taking possession of the property after the tenant's receipt of the agreement. (b) Any real estate broker who executes a vacation rental agreement that does not conform to the provisions or fails to execute a vacation rental agreement shall be guilty of an unfair trade practice in violation of G.S. 75-1.1, and shall be prohibited from commencing an expedited eviction proceeding as provided in Article 4 of this Chapter. (1999-420, s. 1.)

Example: Picture a family planning a much-needed vacation to a beautiful beach destination. They find a vacation rental property that they love and decide to book it for their trip. However, they soon find out that in order for the vacation rental agreement to be valid and enforceable, both the landlord or real estate broker and the tenant must execute a vacation rental agreement.

The family receives the agreement from the landlord or real estate broker, and they are informed that they must sign it or take possession of the property before the agreement becomes valid. They carefully review the agreement, including the required terms and conditions of the rental. After they are satisfied with the terms, they sign the agreement and submit it to the landlord or real estate broker.

According to the law, if the tenant does not sign the agreement, they may still accept it by making a payment or taking possession of the property. In this case, the family has already made the required payment and is planning on taking possession of the property, so they are covered under this provision.

However, if the landlord or real estate broker fails to execute a vacation rental agreement that conforms to the provisions of this Chapter, they may be guilty of an unfair trade practice in violation of G.S. 75-1.1. This means that they may face legal repercussions and be prohibited from commencing an expedited eviction proceeding as provided in Article 4 of this Chapter.

Therefore, it is important for both the landlord or real estate broker and the tenant to comply with the provisions of this Chapter when executing a vacation rental agreement, to ensure that both parties are protected and that the rental process runs smoothly.

Quiz #3:

1. True or False - A tenant can accept a vacation rental agreement by making a payment after receiving the agreement.
2. True or False - A real estate broker who fails to execute a vacation rental agreement may have committed an unfair trade practice.
3. True or False - A real estate broker who violates the provisions of this Chapter can commence an expedited eviction proceeding.

Vacation Rental Agreement Requirements

Section § 42A-11, outlines the requirements for vacation rental agreements executed under the North Carolina Vacation Rental Act. The vacation rental agreement must include a clear and conspicuous notice stating that it is a vacation rental agreement and that the rights and obligations of the parties are defined by law, including unique provisions regarding the disbursement of rent and expedited eviction of tenants. The agreement must also include separate provisions describing the manner in which funds will be received, deposited, and disbursed, any permitted processing or cleaning fees, the rights and obligations of the landlord and tenant, the applicability of expedited eviction procedures, the rights and obligations of the parties upon transfer of the property, and any other obligations of the landlord and tenant. (§ 42A-11)

Example: Imagine a couple planning a romantic getaway to a cozy cabin in the mountains. They find a vacation rental property that they love and decide to book it for their trip. However, before they can finalize their reservation, they must sign a vacation rental agreement that includes several key provisions.

The agreement includes a clear and conspicuous notice stating that it is a vacation rental agreement and that the rights and obligations of the parties are defined by law. This notice also alerts the tenants to unique provisions regarding the disbursement of rent and expedited eviction procedures that may be applicable to their rental.

The agreement also includes separate provisions describing the manner in which funds will be received, deposited, and disbursed. It specifies any permitted processing or cleaning fees and outlines the rights and obligations of both the landlord and the tenant. Additionally, the agreement explains the applicability of expedited eviction procedures, which allow the landlord to quickly and efficiently remove a tenant who violates the terms of the rental agreement.

Furthermore, the agreement outlines the rights and obligations of the parties upon transfer of the property. This provision is important because it informs the tenants of their responsibilities if the property is sold or transferred during their stay. The agreement also specifies any other obligations of the landlord and tenant, ensuring that both parties are aware of their responsibilities and obligations.

By including all of these provisions in the vacation rental agreement, the couple can rest assured that they are protected and that the rental process will run smoothly. They can focus on enjoying their romantic getaway without worrying about any unexpected issues arising during their stay.

Quiz #4:

1. True or False - The vacation rental agreement must contain a notice that explains the rights and obligations of the parties according to the law.
2. True or False - The agreement does not need to include any provisions regarding the receipt, deposit, and disbursement of funds.
3. The landlord's and tenant's rights and obligations need not be specified separately in the vacation rental agreement.
4. The agreement does not have to mention the applicability of expedited eviction procedures.

Trust Account Uses

According to § 42A-15, a landlord or real estate broker can require the tenant to pay rent, security deposit, or other fees in advance of the tenancy if authorized in the vacation rental agreement. If advance payments are required, the landlord or broker must deposit them in a trust account in a federally insured depository institution or a trust institution authorized to do business in the state within three banking days. Any interest earned on these payments will go to the party specified in the agreement.

Example: As per the terms of the vacation rental agreement, the tenant was required to pay the first month's rent and a security deposit of \$1,000 in advance before moving in. The landlord, in accordance with the state law, deposited the payments in a trust account in a bank within three banking days.

The bank paid an interest rate of 1% on the deposited amount, which accumulated to \$10 over the course of the tenancy. As specified in the rental agreement, the interest was paid to the landlord at the end of the lease term.

Advance Payments

According to § 42A-16, a landlord or real estate broker is allowed to disburse up to 50% of the total rent before the tenant occupies the property, as well as any fees owed to third parties that are authorized in the vacation rental agreement. The remaining funds must stay in the trust account until the tenancy commences, the tenant breaches the agreement, the landlord refunds the money, or the funds are transferred in accordance with G.S. 42A-19(b) upon the termination of the landlord's interest in the property. Sales or occupancy taxes and tenant security deposits must not be disbursed until the tenancy ends or there is a material breach. The tenant's agreement to advance payments does not waive their right to reimbursement. (1999-420, s. 1.)

Example: Imagine a family of four planning a beach vacation for the summer. They find a vacation rental property that they love and decide to book it for a week. Before they can confirm their reservation, they must sign a vacation rental agreement that includes specific provisions about the disbursement of rent.

The agreement allows the landlord or real estate broker to disburse up to 50% of the total rent and any authorized fees owed to third parties before the tenant occupies the property. This provision ensures that the landlord can cover any expenses associated with preparing the property for the tenants' arrival.

However, the remaining funds must stay in the trust account until certain conditions are met. These conditions include the tenancy commencing, the tenant breaching the agreement, the landlord refunding the money, or the funds being transferred in accordance with G.S. 42A-19(b) upon the termination of the landlord's interest in the property. This provision helps to protect both the landlord and the tenant by ensuring that funds are not disbursed prematurely.

In addition, the agreement specifies that sales or occupancy taxes and tenant security deposits must not be disbursed until the tenancy ends or there is a material breach. This provision ensures that these funds are available to cover any damages or unpaid expenses that may arise during the tenancy.

Importantly, the agreement states that the tenant's agreement to advance payments does not waive their right to reimbursement. This provision gives the tenants peace of mind, knowing that they can recover any advanced payments in the event of a material breach of the rental agreement.

By including these provisions in the vacation rental agreement, the family can confidently book their vacation rental knowing that their funds are protected and that the rental process will run smoothly. They can focus on enjoying their beach vacation without worrying about any unexpected financial issues.

Quiz #5:

1. True or False - According to § 42A-16, a landlord or real estate broker is allowed to disburse all of the total rent before the tenant takes occupancy.
2. True or False - The tenant's agreement to advance payments waives their right to reimbursement.

Vacation Rental Agreement Reimbursement and Accounting Requirements

Section § 42A-17. Accounting; reimbursement states: (a) A vacation rental agreement shall identify the name and address of the federally insured depository institution or trust institution in which the tenant's security deposit and other advance payments are held in a trust account, and the landlord and real estate broker shall provide the tenant with an accounting of such deposit and payments if the tenant makes a reasonable request for an accounting prior to the tenant's occupancy of the property. (b) Except as provided in G.S. 42A-36, if, at the time the tenant is to begin occupancy of the property, the landlord or real estate broker cannot provide the property in a fit and habitable condition or substitute a reasonably comparable property in such condition, the landlord and real estate broker shall refund to the tenant all payments made by the tenant. (c) A vacation rental agreement may include administrative fees, the amounts of which shall be provided in the agreement, reasonably calculated to cover the costs of processing the tenant's reservation, transfer, or cancellation of a vacation rental. (d) A vacation rental agreement may include a cleaning fee, the amount of which shall be provided in the agreement, reasonably calculated to cover the costs of cleaning the residential property upon the termination of the tenancy. (1999-420, s. 1; 2005-292, s. 1; 2012-17, s. 6; 2017-25, s. 1(c).)

Example: Emily and her family decided to book a beach house for their summer vacation. Before signing the vacation rental agreement, Emily made sure to check that it included the name and address of the federally insured depository institution or trust institution where their security deposit and other advance payments would be held in a trust account in a North Carolina bank. The agreement also stated that they could request an accounting of their deposit and payments prior to occupancy.

On the day they were set to arrive, Emily and her family drove to the beach house only to find it in an unfit and uninhabitable condition. The landlord and real estate broker were unable to substitute a reasonably comparable property and so, according to the law, refunded all payments made by Emily and her family.

The vacation rental agreement had also included a cleaning fee, which Emily and her family had paid along with their security deposit and advance payments.

Vacation Rental Act and the Residential Tenant Security Deposit Act

§ 42A-18. Applicability of the Residential Tenant Security Deposit Act. (a) Except as may otherwise be provided in this Chapter, all funds collected from a tenant and not identified in the vacation rental agreement as occupancy or sales taxes, fees, or rent payments shall be considered a tenant security deposit and shall be subject to the provisions of the Residential Tenant Security Deposit Act, as codified in Article 6 of Chapter 42 of the General Statutes. Funds collected as a tenant security deposit in connection with a vacation rental shall be deposited into a trust account as required by G.S. 42-50. The landlord or real estate broker shall not have the option of obtaining a bond in lieu of maintaining security deposit funds in a trust account. In addition to the permitted uses of tenant security deposit monies as provided in G.S. 42-51, a landlord or real estate broker may, after the termination of a tenancy under this Chapter, deduct from any tenant security deposit the amount of any long distance or per call telephone charges and cable television charges that are the obligation of the tenant under the vacation rental agreement and are left unpaid by the tenant at the conclusion of the tenancy. The landlord or real estate broker shall apply, account for, or refund tenant security deposit monies as provided in G.S. 42-51 within 45 days following the conclusion of the tenancy. (b) A vacation rental agreement shall not contain language compelling or permitting the automatic forfeiture of all or part of a tenant security deposit in case

of breach of contract by the tenant, and no such forfeiture shall be allowed. The vacation rental agreement shall provide that a tenant security deposit may be applied to actual damages caused by the tenant as permitted under Article 6 of Chapter 42 of the General Statutes. (1999-420, s. 1.)

Example: John signed a vacation rental agreement with his landlord before occupying the property. The agreement stated that John had to pay a security deposit of \$500 in addition to his rent payments. John made the required payments and moved into the property.

After John's tenancy ended, the landlord inspected the property and found that there was damage to the walls and furniture. The landlord estimated that the damage would cost \$400 to repair. The landlord deducted the \$400 from John's security deposit and refunded the remaining \$100 to John within 45 days, as required by law.

The vacation rental agreement that John signed did not include any language that would allow the automatic forfeiture of his security deposit in case of breach of contract. Instead, the agreement stated that the landlord could apply the security deposit to actual damages caused by the tenant, as permitted by law.

Security Deposit Waivers: A security deposit waiver is an agreement between a landlord and a tenant that releases the tenant from the obligation to pay a security deposit. Typically, in exchange for the waiver, the tenant agrees to pay a higher rent or an additional fee. The purpose of a security deposit waiver is to allow tenants who may not have the funds to pay a security deposit upfront to still be able to rent a property. Security Deposit Waivers are commonly used in the vacation rental industry as state laws often require the use of security deposits and trust accounts to protect both the landlord and the tenant and are a means of protecting landlords against potential damages.

Section 4

EVICCTIONS

Learning Objective:

By the end of this lesson, brokers will be able to describe the grounds for eviction of a tenant under a vacation rental agreement for 30 days or less, explain the circumstances under which a landlord or real estate broker can bring an expedited eviction proceeding, and distinguish between an expedited eviction proceeding and a separate civil action for issues related to the rental of the residential property.

Grounds for Eviction

Section § 42A-23 outlines the grounds for eviction of a tenant who leases residential property subject to a vacation rental agreement for 30 days or less. The landlord or real estate broker as agent for the landlord can bring an expedited eviction proceeding if the tenant holds over possession after their tenancy has expired, has committed a material breach of the terms of the vacation rental agreement, fails to pay rent as required, or has obtained possession of the property by fraud or misrepresentation. In an expedited eviction proceeding, only the right to possession is relevant, and all other issues related to the rental of the residential property must be presented in a separate civil action.

An example of the use of this text in a vacation rental agreement is:

"The tenant acknowledges that in the event of a material breach of this vacation rental agreement, failure to pay rent, or any fraudulent or misleading activity, the landlord or real estate broker may initiate an expedited eviction proceeding as provided by law. In such a proceeding, the tenant's right to possession is the only relevant issue. All other issues related to the rental of the residential property must be presented in a separate civil action."

Expediated Evictions

North Carolina's § 42A-24 outlines the procedures for an expedited eviction proceeding for vacation rental agreements lasting 30 days or less. Before commencing the proceeding, the landlord or real estate broker must give the tenant at least four hours' notice to quit the premises. An expedited eviction proceeding shall commence with the filing of a complaint and issuance of summons in the county where the property is located. A hearing on the expedited eviction shall be held before a magistrate in the county where the property is located no sooner than 12 hours after service upon the tenant and no later than 48 hours after such service. If the court finds for the landlord or real estate broker, the court shall immediately enter a written order granting the landlord or real estate broker possession and stating the time when the tenant shall vacate the property. The court shall determine the amount of the appeal bond that the tenant shall be required to post should the tenant seek to appeal the court order.

According to § 42A-25 of the North Carolina General Statutes, either a tenant or a landlord may appeal a court order issued under § 42A-24(d) for an expedited eviction to the district court for a trial de novo. A tenant may request the district court to stay the eviction order by posting a cash or secured bond with the court in the amount determined by the court under § 42A-24(d).

North Carolina General Statute § 42A-26 states that if a tenant does not remove their personal property from a vacation rental property after an eviction order has been issued, the landlord or real estate broker has the same rights as provided in G.S. 42-36.2(b). In addition, if a tenant or guest of a tenant fails to vacate the property in compliance with a court order under G.S. 42A-24(d), it is considered a criminal trespass under G.S. 14-159.13.

Section 42A-27 states that landlords or real estate brokers should only initiate eviction proceedings if they have a good faith belief that grounds for eviction exist under this chapter. Violating this provision is considered an unfair trade practice under G.S. 75-1.1 and a Class 1 misdemeanor. (1999-420, s. 1.)

Quiz #6:

1. True or False - According to § 42A-26, a landlord or real estate broker does not have any rights to remove a tenant's personal property from a vacation rental property after an eviction order has been issued.
2. True or False - If a tenant or guest of a tenant fails to vacate the property in compliance with a court order under G.S. 42A-24(d), it is not considered a criminal trespass under G.S. 14-159.13.
3. True or False - Landlords or real estate brokers can initiate eviction proceedings without a good faith belief that grounds for eviction exist under this chapter without any legal consequences.
4. True or False - Violating the provision in Section 42A-27 is considered an unfair trade practice under G.S. 75-1.1 and a Class 1 misdemeanor.

Section 5

TORTS – Civil Wrongs and Legal Liabilities

Learning Objective:

By the end of this section, brokers will be able to identify the requirements of landlords and the responsibilities of tenants as outlined in §§ 42A-31 and 42A-32. Brokers will also understand that these duties cannot be waived but that additional agreements may be made. Brokers will be able to list and explain the various duties of real estate brokers managing vacation rental properties as outlined in § 42A-33, including managing the property in accordance with the agency agreement, ensuring compliance with laws and regulations, and avoiding personal liability in civil actions.

Landlord Responsibilities

According to § 42A-31 of the North Carolina General Statutes, a landlord who rents a vacation property must ensure that the property is in good condition and complies with all applicable building and housing codes. They must also make repairs and maintain all facilities and appliances provided on the property. Additionally, the landlord must provide operable smoke detectors and carbon monoxide alarms that meet specific standards and replace or repair them promptly if necessary. The landlord and tenant may make additional covenants in the vacation rental agreement, but the landlord's duties cannot be waived. (1999-420, s. 1; 2016-98, s. 1.3; 2022-56, s. 3.)

Tenant Responsibilities

In NC, tenants of residential vacation rentals have certain responsibilities outlined in § 42A-32 of the state's rental laws. These include keeping their living spaces clean and safe, disposing of waste properly, maintaining plumbing fixtures, not damaging property or smoke detectors, complying with building codes, and being responsible for any damage to property in their exclusive control. Tenants must also notify landlords of any needed repairs to smoke detectors, but landlords are responsible for providing new batteries annually. These duties cannot be waived, but landlords and tenants may make additional agreements not inconsistent with these laws. (1999-420, s. 1)

Example: Sarah is renting a vacation home for a week. On the third day of her stay, the smoke detector in her bedroom starts beeping intermittently. She assumes it's just a low battery and ignores it. However, the beeping continues for the next two days, and on the last day of her stay, the smoke detector completely stops working.

Sarah packs her bags and leaves without notifying the property manager of the issue. When the property manager inspects the house after Sarah's departure, they find that the smoke detector is inoperable, and they discover that it has been that way for several days.

In this case, Sarah has violated the provision of § 42A-32 that requires tenants to notify landlords of any needed repairs to smoke detectors. By failing to report the issue promptly, Sarah has put herself and other occupants of the property at risk of harm in case of a fire.

Vacation Property Manager Responsibilities

According to § 42A-33, a real estate broker managing a vacation rental property on behalf of a landlord has several responsibilities. These include managing the property in accordance with the terms of the written agency agreement, offering the property to the public in compliance with applicable laws and regulations, notifying the landlord of necessary repairs, verifying the installation and functioning of smoke detectors and carbon monoxide alarms, and avoiding personal liability in any civil action between landlord and tenant. (2016-98, s. 1.3.)

Section 6

The Inevitable – EVACUATIONS

Learning Objective:

By the end of this section, brokers should be able to identify that tenants must comply with mandatory evacuation orders and are entitled to a prorated refund of rent, taxes, and other payments for each night they are unable to occupy the property. Brokers will understand that tenants will not be entitled to a refund if they refused insurance offered by the landlord that would have compensated them for losses resulting from a mandatory evacuation order or if they purchased insurance offered by the landlord.

Mandatory Evacuations

According to § 42A-36 of North Carolina General Statutes, if a mandatory evacuation order is issued by State or local authorities that includes the vacation rental property, the tenant must comply with the order, and will be entitled to a prorated refund of the rent, taxes, and other payments made for each night that the tenant is unable to occupy the property. The tenant will not be entitled to a refund if they refused insurance offered by the landlord that would have compensated them for losses resulting from a mandatory evacuation order or if they purchased insurance offered by the landlord. The cost of insurance offered shall not exceed eight percent (8%) of the total amount charged for the vacation rental to the tenant less the amount paid by the tenant for a security deposit. (1999-420, s. 1; 2005-292, s. 3; 2009-245, s. 2; 2012-12, s. 2(h).)

Example: During a family vacation at a beachfront rental property in North Carolina, a mandatory evacuation order was issued due to an impending hurricane. Despite the order, the tenant decided to stay and continue their vacation. As a result, they were unable to occupy the property for several nights and did not receive a prorated refund for those nights. However, the landlord had offered insurance to compensate the tenant for losses resulting from a mandatory evacuation order, which the tenant refused. Therefore, the tenant was not entitled to a refund for the nights they could not occupy the property.

Quiz #7:

1. True or False - According to § 42A-36, if a mandatory evacuation order is issued by State or local authorities that includes the vacation rental property, the tenant is not required to comply with the order.
2. True or False - If the tenant refused insurance offered by the landlord that would have compensated them for losses resulting from a mandatory evacuation order, they will not be entitled to a refund according to § 42A-36.

Section 7

Sales of Vacation Rentals

Learning Objective:

By the end of this section, brokers should be able to explain the transfer of residential property subject to a vacation rental agreement in North Carolina. Brokers should be able to describe the rights and obligations of the grantee and tenant in such transfers, including the grantee's option to honor or terminate the rental agreement based on the time period remaining on the agreement. Additionally, brokers should be able to list the disclosures and notifications that the landlord and grantee must provide to each other and the tenant upon transfer of the property.

Transfer (Sale) of Vacation Rental Property

This section of the VRA describes the transfer of residential property subject to a vacation rental agreement in North Carolina. If a vacation rental is set to end within 180 days of the transfer, the grantee takes title to the property subject to the rental agreement. If the rental is to end more than 180 days after the transfer, the tenant has no right to enforce the agreement unless the grantee agrees in writing to honor it. The landlord must disclose the time periods the property is subject to the vacation rental agreement, and provide the grantee with each tenant's name, address, and a copy of the rental agreement. The grantee must notify each tenant of the transfer and their rights within 20 days. Upon termination of the landlord's interest in the property, the landlord or real estate broker must transfer all advance rent paid by the tenant and any fees to the landlord's successor in interest within 30 days, or to the tenant if the rental ends more than 180 days after the transfer. Failure to comply constitutes an unfair trade practice, while compliance releases the landlord from further obligations to the tenant.

Example: In October of the previous year John rented a beach house from a landlord for a week-long vacation with his family for an August week. In January, John received a notice from the landlord stating that the property had been sold to a new owner. The landlord informed John that the new owner would be taking

over the rental agreement and that he had no right to enforce the agreement beyond 180 days from recordation.

As per § 42A-38 of the North Carolina General Statutes, the new owner, or grantee, could take title to the property subject to the rental agreement only if the rental is set to end within 180 days of the transfer. However, since John's rental was set to end after 180 days of the transfer, the new owner had no obligation to honor the rental agreement unless he agreed in writing to do so.

The landlord, in compliance with the law, disclosed the time periods the property was subject to the vacation rental agreement and provided the grantee with John's name, address, and a copy of the rental agreement. The grantee also notified John of the transfer and his rights within 20 days.

Upon termination of the landlord's interest in the property, the landlord had to transfer all advance rent paid by John and any fees to the landlord's successor in interest within 30 days, or to John if the rental ended more than 180 days after the transfer.

If the landlord had failed to comply with these legal requirements, it would have constituted an unfair trade practice. However, since the landlord followed the law, he was released from further obligations to John, and John had no right to enforce the rental agreement against the new owner.

Section 8

The Rights of the Armed Forces

Learning Objective:

By the end of this section, brokers will understand that members of the Armed Forces of the United States can terminate a vacation rental agreement under Section 42A-37 of the North Carolina General Statutes. Brokers should be able to describe the circumstances under which a member can terminate a vacation rental agreement, including receiving deployment or permanent change of station orders, and identify the required documentation and notice procedures.

Rights of Armed Forces Members & their Families

Section 42A-37 states that members of the Armed Forces of the United States can terminate a vacation rental agreement if they receive deployment or permanent change of station orders. The termination must be done by providing the landlord or agent with written notice within 10 days of receiving the orders and must be accompanied by official military orders or a signed verification from the commanding officer. Termination is effective immediately upon receipt of the notice, and all monies paid by the member, except nonrefundable fees paid to third parties, shall be refunded within 30 days. The right to terminate the agreement also extends to the member's spouse, and the provisions of this section cannot be waived or modified by the agreement of the parties. (2016-98, s. 1.4; 2017-212, s. 8.6.)

Example: John is a member of the United States Army who recently received deployment orders to serve in Afghanistan for the next 12 months. He had signed a vacation rental agreement with a landlord to stay in a beach house for the next 3 months with his wife, but now he must terminate the agreement due to his orders.

John provides the landlord with a written notice of termination within 10 days of receiving his orders, accompanied by official military orders. The termination is effective immediately upon receipt of the notice, and all

monies paid by John, except nonrefundable fees paid to third parties, must be refunded within 30 days.

The landlord refunds John's security deposit, rent, and taxes, within 30 days of receiving the notice of termination. The right to terminate the agreement also extends to John's spouse, and the provisions of Section 42A-37 of North Carolina General Statutes cannot be waived or modified by the agreement of the parties.

Quiz #8:

1. True or False - according to Section 42A-37, members of the Armed Forces can terminate a vacation rental agreement without providing written notice to the landlord or agent.
2. True or False - If a member of the Armed Forces terminates a vacation rental agreement under Section 42A-37, all monies paid by the member must be refunded within 30 days.
3. True or False - The right to terminate a vacation rental agreement under Section 42A-37 can be waived or modified by the agreement of the parties.

Section 8

Weston's Law

Learning Objective:

Upon completion of this section, brokers will be able to analyze and evaluate the legal implications and requirements of elevator safety in short-term rental properties, including the provisions set forth in Weston's Law, as well as the North Carolina Elevator Safety Act. Brokers will also be able to apply legal principles and analytical skills to identify potential liability issues that may arise from non-compliance with elevator safety requirements, and develop strategies to mitigate such risks for their clients.

Weston's Law

In July 2021, a tragedy occurred when Weston Andrew, a 7-year-old boy, became trapped between an elevator car and shaft in a vacation home his family rented in North Carolina. Despite the efforts of EMS workers, Weston did not survive the incident. This unfortunate event prompted lawmakers to take action in the form of new legislation aimed at improving elevator safety in short-term rental properties. In July 2022, Governor Cooper signed House Bill 619, also known as Weston's Law, which imposes safety requirements on elevators in certain residential properties.

Weston's Law applies to elevators in private residences, cottages, or similar accommodations that are rented for 15 or more calendar days per year. Similar to the North Carolina Elevator Safety Act, the law defines an elevator as any hoisting and lowering mechanism that moves in guides and serves two or more floors of a building or structure.

The legislation mandates that elevators must have a maximum gap of four inches between the hoistway face of the landing door and the car door. Moreover, the law requires elevators to meet minimum force requirements for their doors and gates. Elevator designs must withstand a force of 75 pounds, and the doors and gates must not deflect more than 3/4 of an inch, become permanently deformed, or be displaced from their guides or tracks.

In case any elevator doors or gates do not meet the safety requirements, the landlord of the rental property cannot allow for the elevator to be operated until the safety conditions are met. If the gap between the car door and landing door is more than four inches, the landlord must install a permanent door space guard or door baffle of at least 31.75 inches in height. This addition must be able to withstand 75 pounds of force applied horizontally using a four-inch diameter sphere.

Upon installing a door, door space guard, door baffle, or gate that meets the safety requirements, the landlord must provide the Commissioner of Insurance with a statement signed by a professional elevator installer certifying installation, or a receipt for purchase of the item that was installed, a statement signed by the landlord stating the installation date, and photographs that show the door, door space guard, door baffle or gate installed according to the law.

Weston's Law became effective on October 1, 2022. Property managers must inform their landlord-clients to comply with the safety requirements. Any person who violates the landlord's attempt to prevent the elevator's use until it meets the new safety requirements may face a Class 2 misdemeanor criminal offense. Property managers responsible for short-term rentals should ensure that any elevators comply with the new law and avoid representing any landlord who has not complied but continues to allow the elevator's use.

Quiz Answer Page:

Quiz #1:

- 1) F
- 2) F
- 3) T

Quiz #5:

- 1) F
- 2) F

Quiz #2:

- 1) F
- 2) T

Quiz #6:

- 1) F
- 2) F
- 3) F
- 4) T

Quiz #3:

- 1) T
- 2) T
- 3) F

Quiz #7:

- 1) F
- 2) T

Quiz #4:

- 1) T
- 2) F
- 3) F
- 4) F

Quiz #8:

- 1) F
- 2) T
- 3) F

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Conclusion:

Certain property types, such as vacation rental properties, require a high degree of specialized knowledge and expertise. Brokers need to be thoroughly familiar with all relevant laws and regulations at the local, state, and national levels in order to provide quality service to their clients. The leasing and selling of vacation rental properties involves many intricate nuances that must be fully comprehended to ensure a smooth transaction. While this area of real estate can be complex, gaining a high-level understanding of the key concepts is crucial for success in this field.

Protecting Your Paradise: The Vacation Rentals Lawyer's Guide to Navigating the NC Vacation Rental Act

The course developed by Jeff Malarney is designed to provide real estate brokers with the knowledge and skills necessary to properly represent sellers and landlords who choose to utilize their properties as vacation rentals in North Carolina. With over 30 years of experience as a NC licensed attorney, NC real estate broker, and a NCREC commissioner and past chairman, Jeff Malarney is well-equipped to teach brokers about the nuances of the vacation rental brokerage business and the legal issues that come with it.

In order to serve their clients well, brokers must fully understand all the laws and rules governing vacation rentals, including local, state, and national laws. This course covers the most challenging aspects of vacation rental management, providing suggestions and recommendations on how to better advise sellers and landlords about the management of their vacation rental properties.

One of the key benefits of this course is that it will help brokers gain a more thorough understanding of vacation rental management practices. By doing so, brokers will be better equipped to apply acceptable methods to the professional and ethical management of vacation rentals and thus better serve their clients.

The course covers the legal requirements under the NC Vacation Rental Act (G.S. 42A), including material fact disclosures and the potential liability for lack of such disclosures. Brokers will also learn how to properly manage their clients' expectations related to the knowledge of these material facts.

In addition, the course addresses the responsibilities of brokers who are also REALTORS® and their pledge to adhere to the REALTOR® Code of Ethics, particularly as it relates to material fact disclosures. Overall, this course is an essential resource for real estate brokers who want to expand their knowledge and skills in vacation rental management and better serve their clients.

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