

Durham

North Carolina

TENANT TRAINING

PROGRAM MANUAL

Sponsored by:

The City of Durham
Department of Neighborhood Improvement Services

In partnership with
Durham Police Department
Solid Waste Management Department
Community Development Department
City/County Planning and Zoning Department
Public Works (Stormwater Services Division)
Water Management

The Housing Authority of the City of Durham
Legal Aid of North Carolina, Inc. – Durham Office

First edition 2012

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A PRACTICAL GUIDE FOR
TENANTS

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Various parts of this document provide broad descriptions of legal procedure. However, **no part of this manual should be regarded as legal advice or considered a replacement of a landlord's or tenant's responsibility to be familiar with the current federal, state, and local law governing a particular situation.** If you need legal advice, seek the services of a North Carolina licensed attorney.

Copyright Information

This manual is meant to give you general information. It is not meant to give you specific legal advice. If you need advice or if you have questions, you should contact a North Carolina licensed attorney. If you are a senior citizen or a low-income person you may wish to contact Legal Aid of North Carolina at 866.219.5262.

Note: We have not attempted to address all issues with which tenants should be familiar. Also, while we have attempted to ensure that the material is consistent with federal, state, and local law current at the time of publication, the law is constantly changing. We urge tenants to keep informed of changes in the law and the evolution of local practices and procedures.

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POINTS TO CONSIDER

KNOW YOUR LOCAL LANDLORD AND TENANT LAW

Landlord and Tenant law balances the rights of rental property owners (landlords) to control, protect and benefit from their investments and the rights of rental property residents (residents, or tenants) to control, protect and enjoy the homes they rent. Unfortunately, the balancing act may result in some dissatisfaction on both parts. There are those who believe the law is stacked against landlords and others who believe that the law is unfair to residents.

We have found a surprising level of misinformation and misunderstanding by both tenants and landlords. It is important to be well informed about the law and your rights and obligations. If you need legal assistance, find an attorney who specializes in Landlord and Tenant issues and read the local statutes. Go to www.ncleg.net to view the North Carolina General Statutes Chapter 42, the Landlord and Tenant laws.

Remember that your best chance for a fair application of Landlord and Tenant law comes with a complete knowledge of it.

WHAT IS COVERED BY THE LAWS DISCUSSED IN THESE MATERIALS?

All types of housing in which people pay to live are covered:

- Houses
- Apartments
- Mobile Homes
- Mobile Home Lots
- Boarding Houses
- Public, Subsidized and Low-income Housing
- Condominiums

Rentals of storage units and vacation homes are not covered by these laws.

Who is protected by these laws? People who lease their homes. If a tenant pays for rent by giving a landlord part of the tenant's crop, or if a tenant pays rent solely by working for the landlord, these laws protect the tenant. If a motel room is a tenant's primary home, the laws discussed in these materials apply.

What is a residential lease? A residential lease is a contract for the rental of a home.

Does a lease have to be written? No. In North Carolina, both written and oral (spoken) leases are valid and legally enforceable.

Is there any warranty that comes with a lease? Yes. In North Carolina, the law provides an implied warranty, or an unwritten guarantee that a rental home is safe and fit for occupancy.

NORTH CAROLINA GENERAL STATUTES § 42-41 MUTUALITY OF OBLIGATIONS

Many of the North Carolina laws that govern the legal relationship between tenants and landlords are in Chapter 42 of the North Carolina General Statutes. The abbreviation "G.S." is for General Statutes. The § is the symbol for the word "section."

In North Carolina, tenants and landlords have mutual legal duties and obligations. The most basic obligations are the tenant's duty to pay rent, and the landlord's duty to make repairs. Every tenant has a legal duty to pay rent on time. Every landlord has a legal duty to provide necessary services and repairs.

At **G.S. § 42-41**, the law states:

The tenant's obligation to pay rent under the rental agreement or assignment and to comply with G.S. 42-43, and the landlord's obligation to comply with G.S. 42-42(a) shall be mutually dependent. (1977, c. 770, s. 1.)

This law means that a tenant cannot lawfully refuse to pay rent or withhold any rent payment for any reason, unless and until a court decides otherwise.

For example, even if a landlord will not make repairs, a tenant cannot refuse to pay rent. If a tenant does work at the home or pays for repairs or services at the home, the tenant does not have the right to deduct the cost from the rent. Unless the landlord agrees in advance in writing, a tenant cannot subtract any costs from the rent.

Also, this law means that a landlord cannot lawfully refuse to make necessary repairs or provide necessary services for any reason.

For instance, if the tenant's rent is late or is not paid, the landlord cannot refuse to repair the wiring or provide necessary pest control.

WARNING: A landlord has the right to evict you for failing to pay rent.

If a landlord does not provide services or make repairs within a reasonable time, you do **not** have the right to withhold any part of the rent or to pay for repairs or services and then deduct that cost from the rent.

If a landlord does not provide services or repairs, you should get legal advice about what to do.

If you have a Housing Choice Voucher you should ask the housing program for help.

CHAPTER 1: BEFORE YOU SIGN THE LEASE

➤ Is there a limit to how much rent a landlord can charge?

No. Unless your rent is based on your household income, there is no legal limit to how much rent a landlord can charge. The only way to control the rent is through the lease agreement.

➤ Can a landlord charge an application fee?

Yes. In North Carolina, the law does not limit the amount of an application fee. The general rule is that application fees are not refundable. There are exceptions to that rule. For example, an application fee might be refundable if a home is not fit for occupancy due to problems with an infestation, or problems with plumbing, water, heating, cooling, or electricity. An application fee might be refundable if a place is not ready for occupancy on time.

➤ Is it legal for a landlord or rental agent to require references, or do background checking or credit checking? Can I be charged a fee for that?

Yes, if the landlord or rental agent does that with every applicant. Landlords must treat applicants and tenants equally and fairly.

Fair housing is the law.

Federal, state and local laws require landlords to give equal, fair treatment to applicants and tenants.

A rental agent or landlord cannot discriminate (give unequal treatment) with respect to any applicant or tenant or household member, based on the individual's

- Religion
- National Origin
- Color
- Race
- Sex
- Familial Status (people who have minor children)
- Disability

Under the Fair Housing laws, a person is considered "disabled" if the person has impaired sight, hearing or mobility, or chronic mental illness, or dementia, or AIDS/HIV, or alcoholism or past drug use, or developmental disabilities. More information about the Fair Housing laws is included with these materials.

CAUTION

If you have a Housing Choice Voucher, do **not** sign a lease unless and until the housing program has inspected and approved BOTH the home and the lease.

The Housing Choice Voucher Program cannot pay any rent for you until the program has approved the lease and the residence!

Before you make an application or sign a lease to rent a place, you should do these things.

- Ask to see the actual place that you will be renting. Often, a "model" bears little resemblance to a place that is actually available for you to rent.
- Consider the neighborhood. Ask other tenants and local law enforcement about whether there is a lot of crime. Try to be sure that you are moving into an area where you feel that your personal safety and the safety of your belongings and vehicle are not at risk.
- Check out the parking situation. Is there a written parking or towing policy? Is the parking policy posted? Are there clearly marked signs, parking spaces etc.? Is there adequate parking for residents and visitors?
- Speak with other tenants to find out if they have had problems with the landlord or the landlord's staff. Does the landlord make repairs in a timely manner? Is the landlord or their management company respectful of tenants after they sign the lease?
- Consider the neighbors. Do you have a compatible life style with the tenants who will live around you?
- Ask if the landlord has written rules and regulations in addition to the lease. If so, get and review a copy before signing the lease. Are there Homeowners Association rules which apply to the property? If so, get and review a copy before signing the lease.
- Check the court records. At the Register of Deeds office, find out who owns the property. At the Special Proceedings office, ask whether the property is being foreclosed.

➤ The Lease

In North Carolina, oral leases are valid. However, we strongly recommend that a tenant should make a written lease agreement. The agreement should be clear. Both the tenant and landlord should understand the terms of their contract.

Read over the lease carefully. If you do not understand all the terms in the lease, or if you have questions or concerns, have an attorney review it before you sign anything. Read all the attachments, "house rules," and addenda.

- Do not sign a lease with any blanks in it.
- Make sure all of the dates and dollar amounts listed in the lease are correct.
- Always get a copy of the lease and attachments that is signed by you and the landlord.
- If English is not your main language, ask for a lease in your language or ask someone you trust to translate the lease for you.

- If a landlord agrees that you can do something that is forbidden by the lease (for instance, the landlord says that you can have pets or that you can end the lease early), or if the landlord promises to do something such as making repairs or replacing appliances or carpet, you should make sure that all those agreements are written and included in the lease itself. As an alternative, you and the landlord should write those agreements, date and sign that paper, and state on the paper that it is made a part of the lease. Keep a copy.

A lease is a contract.

Once the lease has been signed, it is a binding contract. The terms can be changed only if all of the people who signed the original lease agree to a change in writing.

Both you and the landlord are bound by the lease. If one person breaches (breaks) the contract, the other can sue in civil court to enforce rights that are stated in the lease.

➤ **Move-In Inspection**

- Before signing a lease and moving in, every tenant should do a thorough inspection of the place, inside and out.
- You may ask the City of Durham's Department of Neighborhood Improvement Services for a free inspection. The City will see if the home meets the local Minimum Housing Code. If there is a problem they will tell you and the landlord.
- If you have a Housing Choice Voucher, the housing program inspectors will see if a home meets program standards. If there is a problem they will tell you and the landlord.
- Even if a housing program or the City inspects the home, you should inspect the place *yourself*. You will be the person who is living there and responsible for the home.
- Some landlords will give you a move-in inspection form. If not, you should prepare one. A sample is included with these materials.
- Make a written inspection record, and sign and date that with the landlord. Keep a copy.
- Note whether there are any marks, stains, burns, water damage, or other damage to counters, floors, carpets, ceilings, walls, appliances, and so on. Look for signs of roof leaks or flooding. Check the water pressure and check for plumbing leaks. See if the commode flushes as it should, and if drains work. Check to see if all keys, locks, screens, windows, handles, doors, drawers, shelves, and closet rods work properly. See if the electric appliances, sockets, lights, heat, and air conditioning are working. If anything is missing, broken, or needs repair, write that on the record.
- Take pictures of any problem areas.
- Do not to use, or become responsible for someone else's property or junk vehicle. Abandoned items may contain bed bugs or other pests. If anything indoors or outdoors was left by someone else, write that on your inspection record. Ask the landlord to remove it, or remove it yourself.

CHAPTER 2: TENANT RESPONSIBILITIES AND DUTIES

A tenant must pay all rent due under the lease, and must pay that on time. Each tenant must also perform certain day-to-day maintenance.

➤ **A tenant's legal responsibilities and duties include these things.**

1. Pay the rent on time.
2. Keep the home clean and sanitary. Get rid of garbage in a clean and safe way. Keep the air vents, plumbing (sinks, toilet, bath tub) and appliances (stove, refrigerator) clean.
3. Do no damage to the inside or outside of the home. A tenant cannot let anyone visiting cause damage to anything, either.
4. Give the landlord notice of repairs or services that are needed.
5. Give the landlord written advance notice if the tenant decides to move out at the end of the lease. If there is a written lease, usually the amount of notice required is stated in the lease. If not, or if there is an oral lease, North Carolina law states that proper advance notice is
 - 2 days if tenant pays rent every week
 - 7 days if tenant is leasing month-to-month.
 - 1 month if the lease is year-to-year.
 - 30 days if tenant owns a mobile home and rents the lot.

Unless a lease requires it, that notice does not have to be in writing. But, it is always best for a tenant to write the landlord a letter. Date the letter, and state the date when you plan to move. Keep a copy of the letter.

➤ **Responsibility for Repairs**

Tenants are not responsible for repairs that are needed due to "reasonable wear and tear" that is caused by routine use of a home. Reasonable wear and tear includes furniture scuffs on a wall, a carpet becoming worn, and a doorknob that becomes loose over time. Tenants are responsible for what household members and guests do.

- Tenants are responsible for paying for damage resulting from *negligence* (carelessness), including negligence of household members and guests.
- If a guest causes damage, the tenant may be held responsible.
- If there is damage the landlord is responsible for making repairs, but the landlord may bill the tenant for the repairs.
- If a tenant makes any change to the condition of the home, the tenant is responsible for the cost to put the home back in its original condition.
- If the tenant installs anything that is *attached* to anything inside or outside a home, the item becomes the landlord's property unless the tenant removes the item and puts the home back in its original condition.
- Tenants are responsible for the costs for routine interior cleaning, and for replacing light bulbs and air filters.

- If a repair or service is needed, the tenant must inform the landlord. Except in an emergency, it is best to make a service or repair request in a signed, dated writing. The tenant should keep a copy of every repair or service request.
- The law gives a landlord a “reasonable” time in which to correct a problem or make repairs. What is a reasonable time will depend on the particular situation.
- The landlord is responsible for repairs or services needed due to
 - routine use of a home ("ordinary wear and tear");
 - sudden emergencies such as a fire or water heater breaking;
 - natural forces (weather); and
 - acts of third parties who are not guests (vandals, robbers).

INSURANCE

You are strongly encouraged to get renter's insurance. As a general rule a landlord insures only the building or structure, and is not responsible for damage to your personal property. There are some exceptions to that rule, but the exceptions seldom help unless a tenant can prove that a landlord was negligent in maintaining the place.

➤ **The legal warranty of safe and habitable housing**

Whether your rental home is new or old, and whether your home is an apartment, mobile home, room, condo, or house, the laws require your landlord to keep the home safe and habitable (fit for occupancy).

There is no "as is" or "no warranty" home rental in North Carolina, even if a written lease states otherwise. Just as a tenant must pay rent on time, a landlord must provide a safe residence and keep the home in a condition that meets all local and state laws.

➤ **The Right to Request Services and Repairs**

As a tenant in North Carolina, you have the right to ask your landlord for necessary repairs and services. You have the right to get help if a landlord does not provide those.

A landlord does not have the right to evict you if you ask for repairs or services or if you seek help in getting your rights. It is against the law for a landlord to retaliate against a tenant and try to evict a tenant solely because the tenant asks for repairs. That is called "retaliatory eviction."

➤ **Retaliatory Eviction**

A landlord cannot legally evict you for:

- Complaining about bad conditions
- Asking for repairs or services
- Complaining to a government agency about violations of health or safety laws or any other law
- Joining a tenant's organization
- Trying to get your rights under the lease

If a landlord attempts to evict you for any of these reasons, that is a retaliatory eviction. You should seek legal help.

The retaliatory eviction laws are as follows.

G.S. § 42-37.1. Defense of retaliatory eviction.

(a) It is the public policy of the State of North Carolina to protect tenants and other persons whose residence in the household is explicitly or implicitly known to the landlord, who seek to exercise their rights to decent, safe, and sanitary housing. Therefore, the following activities of such persons are protected by law:

- (1) A good faith complaint or request for repairs to the landlord, his employee, or his agent about conditions or defects in the premises that the landlord is obligated to repair under G.S. 42-42;
- (2) A good faith complaint to a government agency about a landlord's alleged violation of any health or safety law, or any regulation, code, ordinance, or State or federal law that regulates premises used for dwelling purposes;
- (3) A government authority's issuance of a formal complaint to a landlord concerning premises rented by a tenant;
- (4) A good faith attempt to exercise, secure or enforce any rights existing under a valid lease or rental agreement or under State or federal law; or
- (5) A good faith attempt to organize, join, or become otherwise involved with, any organization promoting or enforcing tenants' rights.

(b) In an action for summary ejection pursuant to G.S. 42-26, a tenant may raise the affirmative defense of retaliatory eviction and may present evidence that the landlord's action is substantially in response to the occurrence within 12 months of the filing of such action of one or more of the protected acts described in subsection (a) of this section.

(c) Notwithstanding subsections (a) and (b) of this section, a landlord may prevail in an action for summary ejection if:

- (1) The tenant breached the covenant to pay rent or any other substantial covenant of the lease for which the tenant may be evicted, and such breach is the reason for the eviction; or
- (2) In a case of a tenancy for a definite period of time where the tenant has no option to renew the lease, the tenant holds over after expiration of the term; or
- (3) The violation of G.S. 42-42 complained of was caused primarily by the willful or negligent conduct of the tenant, member of the tenant's household, or their guests or invitees; or
- (4) Compliance with the applicable building or housing code requires demolition or major alteration or remodeling that cannot be accomplished without completely displacing the tenant's household; or
- (5) The landlord seeks to recover possession on the basis of a good faith notice to quit the premises, which notice was delivered prior to the occurrence of any of the activities protected by subsections (a) and (b) of this section; or
- (6) The landlord seeks in good faith to recover possession at the end of the tenant's term for use as the landlord's own abode, to demolish or make major alterations or remodeling of the dwelling unit in a manner that requires the complete displacement of the tenant's household, or to terminate for at least six months the use of the property as a rental dwelling unit. (1979, c. 807.)

G.S. § 42-37.2. Remedies.

(a) If the court finds that an ejectment action is retaliatory, as defined by this Article, it shall deny the request for ejectment; provided, that a dismissal of the request for ejectment shall not prevent the landlord from receiving payments for rent due or any other appropriate judgment.

(b) The rights and remedies created by this Article are supplementary to all existing common law and statutory rights and remedies. (1979, c. 807.)

G.S. § 42-37.3. Waiver.

Any waiver by a tenant or a member of his household of the rights and remedies created by this Article is void as contrary to public policy. (1979, c. 807.)

➤ Constructive Eviction

The law in North Carolina requires a landlord to keep your home in safe and habitable condition. If the landlord does not, and the rental home cannot be occupied for that reason, the law construes (deems) that as being an eviction. That is illegal

Here is an example. If the heating in a home stops working, the tenant must tell the landlord. The tenant should tell the landlord in writing unless the situation is an emergency. If the landlord does not fix the problem within a reasonable time and if the weather is so cold that is not safe for anyone to live in the home, that is a "constructive eviction."

In such a situation, a tenant should seek legal help. Tenants may also contact the Department of Neighborhood Improvement Services and ask for an inspection of the home. Tenants who have Housing Choice Vouchers should contact the housing program for help.

➤ Practical Tips

You, your household members and guests must treat the rental property with respect. Tenants do not have the right to make changes to the home without advance written permission. Neither property owners nor tenants have the right to disturb neighbors, or leave trash or waste outside.

As a tenant, you have the legal right to live as though the home is yours. You have the right to come and go as you wish, and to decide who can and cannot enter the home. You have the right to be left alone in peace. The law is that you have the right to "quiet enjoyment" of the property.

Bear in mind that every landlord has the right to inspect a place from time to time, with reasonable advance notice. Be prepared for inspections and understand that those are done to keep your home in good, safe condition.

You should handle your business with the landlord in a businesslike way. Ask for repairs and services in writing. Do not depend on telephone messages.

Protect yourself, your home and the community. Community safety is everyone's responsibility. Form or join a Neighborhood Watch group. Tell the landlord or local law enforcement if you know of something that puts people's safety at risk.

Pay the rent on time! If the landlord cannot depend on you to pay rent on time, the landlord can and will find another tenant.

If you know that your rent payment will be late, tell the landlord in advance. Meet and make a written plan for how you will bring the account current. If you usually get your pay or income too late to pay your rent on time, meet with the landlord and see if you can agree to change the date when the rent is due.

- A tenant's legal duties are stated at **G.S. § 42-43(a)**. The tenant must:
- (1) Keep that part of the premises which he occupies and uses as clean and safe as the condition of the premises permit and cause no unsafe or unsanitary conditions in the common areas and remainder of the premises which he uses;
 - (2) Dispose of all ashes, rubbish, garbage, and other waste in a clean and safe manner;
 - (3) Keep all plumbing fixtures in the dwelling unit or use by the tenant as clean as their condition permits;
 - (4) Not deliberately or negligently destroy, deface, damage, or remove any part of the premises or knowingly permit any person to do so;
 - (5) Comply with any and all obligations imposed upon the tenant by current applicable building and housing codes;
 - (6) Be responsible for all damage, defacement, or removal of any property inside a dwelling unit in his exclusive control unless said damage, defacement or removal was due to ordinary wear and tear, act of the landlord or his agent, defective products supplied or repairs authorized by the landlord, acts of third parties not invitees of the tenant, or natural forces.
 - (7) Notify the landlord, ***in writing***, of the need for replacement or repairs to a smoke detector. The landlord shall ensure that a smoke detector is operable and in good repair at the beginning of each tenancy. Unless the landlord and the tenant have a written agreement to the contrary, the landlord shall place new batteries in a battery operated smoke detector at the beginning of a tenancy and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord.

CHAPTER 3:

LANDLORD RESPONSIBILITIES AND DUTIES

A landlord's legal maintenance and repair duties under the Residential Rental Agreements Act are as follows.

- The landlord must:
 1. Make any repairs needed to keep the home fit and safe.
 2. Keep the plumbing, heating, sanitary, and electrical equipment in good and safe working order, and provide a smoke alarm.
 3. Provide a carbon monoxide detector if that is required due to the heating system in use.
 4. If the landlord provides appliances, such as a stove or a refrigerator, the landlord must repair or replace them as needed.
 5. Keep the stairs, sidewalks and areas that are used by everyone in safe condition.
 6. Obey the City of Durham's Minimum Housing Code.
 7. Inform tenant if she or he sells the property.
 8. Inform tenant in writing of any complaints about the way that the tenant is treating the property.

The landlord's legal duties are stated at **G.S. § 42-42(a)**. The landlord must:

(1) Comply with the current applicable building and housing codes, whether enacted before or after October 1, 1977, to the extent required by the operation of such codes; no new requirement is imposed by this subdivision (a)(1) if a structure is exempt from a current building code.

(2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.

(3) Keep all common areas of the premises in safe condition.

(4) Maintain in good and safe working order and promptly repair all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances supplied or required to be supplied by the landlord provided that notification of needed repairs is made to the landlord in writing by the tenant, except in emergency situations.

(5) Provide operable smoke detectors, either battery-operated or electrical, having an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and install the smoke detectors in accordance with either the standards of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the landlord shall retain or provide as proof of compliance. The landlord shall replace or repair the smoke detectors within 15 days of receipt of notification if the landlord is notified of needed replacement or repairs in writing by the tenant. The landlord shall ensure that a smoke detector is operable and in good repair at the beginning of each tenancy. Unless the landlord and the tenant have a written agreement to the contrary, the landlord shall place new batteries in a battery-operated smoke detector at the beginning of a tenancy and the tenant shall replace the batteries as needed during the tenancy.

Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord.

(6) If the landlord is charging for the cost of providing water or sewer service pursuant to G.S. 42-42.1 and has actual knowledge from either the supplying water system or other reliable source that water being supplied to tenants within the landlord's property exceeds a maximum contaminant level established pursuant to Article 10 of Chapter 130A of the General Statutes, provide notice that water being supplied exceeds a maximum contaminant level.

(7) Provide a minimum of one operable carbon monoxide detector per rental unit per level, either battery-operated or electrical, that is listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075, and install the carbon monoxide detectors in accordance with either the standards of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the landlord shall retain or provide as proof of compliance. A landlord that installs one carbon monoxide detector per rental unit per level shall be deemed to be in compliance with standards under this subdivision covering the location and number of detectors. The landlord shall replace or repair the carbon monoxide detectors within 15 days of receipt of notification if the landlord is notified of needed replacement or repairs in writing by the tenant. The landlord shall ensure that a carbon monoxide detector is operable and in good repair at the beginning of each tenancy. Unless the landlord and the tenant have a written agreement to the contrary, the landlord shall place new batteries in a battery-operated carbon monoxide detector at the beginning of a tenancy, and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord. A carbon monoxide detector may be combined with smoke detectors if the combined detector does both of the following: (i) complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for smoke detectors; and (ii) emits an alarm in a manner that clearly differentiates between detecting the presence of carbon monoxide and the presence of smoke. This subdivision applies only to dwelling units having a fossil-fuel burning heater or appliance, fireplace, or an attached garage. Any operable carbon monoxide detector installed before January 1, 2010, shall be deemed to be in compliance with this subdivision.

(8) Within a reasonable period of time based upon the severity of the condition, repair or remedy any imminently dangerous condition on the premises after acquiring actual knowledge or receiving notice of the condition. Notwithstanding the landlord's repair or remedy of any imminently dangerous condition, the landlord may recover from the tenant the actual and reasonable costs of repairs that are the fault of the tenant. For purposes of this subdivision, the term "imminently dangerous condition" means any of the following:

- a. Unsafe wiring.
- b. Unsafe flooring or steps.
- c. Unsafe ceilings or roofs.
- d. Unsafe chimneys or flues.

- e. Lack of potable water.
- f. Lack of operable locks on all doors leading to the outside.
- g. Broken windows or lack of operable locks on all windows on the ground level.
- h. Lack of operable heating facilities capable of heating living areas to 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from November 1 through March 31.
- i. Lack of an operable toilet.
- j. Lack of an operable bathtub or shower.
- k. Rat infestation as a result of defects in the structure that make the premises not impervious to rodents.
- l. Excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation or mold.

(b) The landlord is not released of his obligations under any part of this section by the tenant's explicit or implicit acceptance of the landlord's failure to provide premises complying with this section, whether done before the lease was made, when it was made, or after it was made, unless a governmental subdivision imposes an impediment to repair for a specific period of time not to exceed six months. Notwithstanding the provisions of this subsection, the landlord and tenant are not prohibited from making a subsequent written contract wherein the tenant agrees to perform specified work on the premises, provided that said contract is supported by adequate consideration other than the letting of the premises and is not made with the purpose or effect of evading the landlord's obligations under this Article. (1977, c. 770, s. 1; 1995, c. 111, s. 2; 1998-212, s. 17.16(i); 2004-143, s. 3; 2008-219, ss. 2, 6; 2009-279, s. 3.)

➤ **Water and Sewer Services**

Water and sewer service costs may be included in the rent or may be charged to the tenant. If the tenant fails to pay the bill the landlord does not have the right to cut off the water service.

Tenants must avoid causing damage to the plumbing. A tenant should not put food, hair or grease down a drain or commode or use the plumbing for anything other than sanitation. If a tenant's actions or negligence cause plumbing problems, the landlord may bill the tenant for repairs.

The landlord's rights and duties related to water use are stated at **G.S. § 42-42.1(a)**.

(a) For the purpose of encouraging water conservation, pursuant to a written rental agreement, a landlord may charge for the cost of providing water or sewer service to tenants who occupy the same contiguous premises pursuant to G.S. 62-110(g).

(b) The landlord may not disconnect or terminate the tenant's water or sewer services due to the tenant's nonpayment of the amount due for water or sewer services. (2004-143, s. 4.)

➤ Safety Devices

Both the tenant and the landlord are responsible for keeping safety equipment in good working order. If there is any problem with a carbon monoxide alarm or smoke alarm, the tenant must inform the landlord *right away*. A tenant does not have the right to remove or turn off an alarm, except to replace the batteries.

The tenant's and landlord's duties and rights related to maintaining smoke detectors and carbon monoxide detectors are stated at **G.S. § 42-44**.

(a) Any right or obligation declared by this Chapter is enforceable by civil action, in addition to other remedies of law and in equity.

(a1) If a landlord fails to provide, install, replace, or repair a smoke detector under the provisions of G.S. 42-42(a)(5) or a carbon monoxide detector under the provisions of G.S. 42-42(a)(7) within 30 days of having received written notice from the tenant or any agent of State or local government of the landlord's failure to do so, the landlord shall be responsible for an infraction and shall be subject to a fine of not more than two hundred fifty dollars (\$250.00) for each violation. The landlord may temporarily disconnect a smoke detector or carbon monoxide detector in a dwelling unit or common area for construction or rehabilitation activities when such activities are likely to activate the smoke detector or carbon monoxide detector or make it inactive.

(a2) If a smoke detector or carbon monoxide detector is disabled or damaged, other than through actions of the landlord, the landlord's agents, or acts of God, the tenant shall reimburse the landlord the reasonable and actual cost for repairing or replacing the smoke detector or carbon monoxide detector within 30 days of having received written notice from the landlord or any agent of State or local government of the need for the tenant to make such reimbursement. If the tenant fails to make reimbursement within 30 days, the tenant shall be responsible for an infraction and subject to a fine of not more than one hundred dollars (\$100.00) for each violation. The tenant may temporarily disconnect a smoke detector or carbon monoxide detector in a dwelling unit to replace the batteries or when it has been inadvertently activated.

(b) Repealed by Session Laws 1979, c. 820, s. 8.

(c) The tenant may not unilaterally withhold rent prior to a judicial determination of a right to do so.

(d) A violation of this Article shall not constitute negligence per se. (1977, c. 770, s. 1; 1979, c. 820, s. 8; 1998-212, s. 17.16(k); 2008-219, s. 4.)

➤ Special Protections in Residential Rentals: Victims of Violence

It is illegal for a landlord to discriminate against a crime victim. North Carolina law provides special protections to victims of stalking, sexual assault or domestic violence. If an applicant or tenant gives a landlord proof that the person or a household member is a victim of violence, the landlord must allow an applicant to cancel a lease, allow a tenant to end a lease early, or allow a change of the locks at the tenant's expense, or allow the tenant to remove an abusive person from the lease and the home.

The laws concerning the protection of crime victims in residential rentals are stated at **G. S. §§ 42-42.2, 42-42.3 and 42-45.1.**

G.S. § 42-42.2 Victim protection – nondiscrimination. A landlord shall not terminate a tenancy, fail to renew a tenancy, refuse to enter into a rental agreement, or otherwise retaliate in the rental of a dwelling based substantially on: (i) the tenant, applicant, or a household member's status as a victim of domestic violence, sexual assault, or stalking; or (ii) the tenant or applicant having terminated a rental agreement under G.S. 42-45.1. Evidence provided to the landlord of domestic violence, sexual assault, or stalking may include any of the following:

- (1) Law enforcement, court, or federal agency records or files.
- (2) Documentation from a domestic violence or sexual assault program.
- (3) Documentation from a religious, medical, or other professional. (2005-423, s. 6.)

G.S. § 42-42.3 Victim protection – change locks. (a) If the perpetrator of domestic violence, sexual assault, or stalking is not a tenant in the same dwelling unit as the protected tenant, a tenant of a dwelling may give oral or written notice to the landlord that a protected tenant is a victim of domestic violence, sexual assault, or stalking and may request that the locks to the dwelling unit be changed. A protected tenant is not required to provide documentation of the domestic violence, sexual assault, or stalking to initiate the changing of the locks, pursuant to this subsection. A landlord who receives a request under this subsection shall change the locks to the protected tenant's dwelling unit or give the protected tenant permission to change the locks within 48 hours.

(b) If the perpetrator of the domestic violence, sexual assault, or stalking is a tenant in the same dwelling unit as the victim, any tenant or protected tenant of a dwelling unit may give oral or written notice to the landlord that a protected tenant is a victim of domestic violence, sexual assault, or stalking and may request that the locks to the dwelling unit be changed. In these circumstances, the following shall apply:

- (1) Before the landlord or tenant changes the locks under this subsection, the tenant must provide the landlord with a copy of an order issued by a court that orders the perpetrator to stay away from the dwelling unit.
- (2) Unless a court order allows the perpetrator to return to the dwelling to retrieve personal belongings, the landlord has no duty under the rental agreement or by law to allow the perpetrator access to the dwelling unit, to provide keys to the perpetrator, or to provide the perpetrator access

to the perpetrator's personal property within the dwelling unit once the landlord has been provided with a court order requiring the perpetrator to stay away from the dwelling. If a landlord complies with this section, the landlord is not liable for civil damages, to a perpetrator excluded from the dwelling unit, for loss of use of the dwelling unit or loss of use or damage to the perpetrator's personal property.

(3) The perpetrator who has been excluded from the dwelling unit under this subsection remains liable under the lease with any other tenant of the dwelling unit for rent or damages to the dwelling unit.

A landlord who receives a request under this subsection shall change the locks to the protected tenant's dwelling unit or give the protected tenant permission to change the locks within 72 hours.

(c) The protected tenant shall bear the expense of changing the locks. If a landlord fails to act within the required time, the protected tenant may change the locks without the landlord's permission. If the protected tenant changes the locks, the protected tenant shall give a key to the new locks to the landlord within 48 hours of the locks being changed. (2005-423, s. 6.)

G.S. § 42-45.1. Early termination of rental agreement by victims of domestic violence, sexual assault, or stalking.

(a) Any protected tenant may terminate his or her rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord shall be accompanied by either: (i) a copy of a valid order of protection issued by a court pursuant to Chapter 50B or 50C of the General Statutes, other than an ex parte order, (ii) a criminal order that restrains a person from contact with a protected tenant, or (iii) a valid Address Confidentiality Program card issued pursuant to G.S. 15C-4 to the victim or a minor member of the tenant's household. A victim of domestic violence or sexual assault must submit a copy of a safety plan with the notice to terminate. The safety plan, dated during the term of the tenancy to be terminated, must be provided by a domestic violence or sexual assault program which substantially complies with the requirements set forth in G.S. 50B-9 and must recommend relocation of the protected tenant.

(b) Upon termination of a rental agreement under this section, the tenant who is released from the rental agreement pursuant to subsection (a) of this section is liable for the rent due under the rental agreement prorated to the effective date of the termination and payable at the time that would have been required by the terms of the rental agreement. The tenant is not liable for any other rent or fees due only to the early termination of the tenancy. If, pursuant to this section, a tenant terminates the rental agreement 14 days or more before occupancy, the tenant is not subject to any damages or penalties.

(c) Notwithstanding the release of a protected tenant from a rental agreement under subsection (a) of this section, or the exclusion of a perpetrator of domestic violence, sexual assault, or stalking by court order, if there are any remaining tenants residing in the dwelling unit, the tenancy shall continue for those tenants. The perpetrator who has been excluded from the dwelling unit under court order remains liable under the lease with any other tenant of the dwelling unit for rent or damages to the dwelling unit.

(d) The provisions of this section may not be waived or modified by agreement of the parties. (2005-423, s. 7.)

➤ **Special Protections in Residential Rentals: Military Servicemembers**

Members of the military have the right to end a lease in some situations. A landlord cannot penalize a military tenant if the lease termination takes place as stated here, in **G.S. § 42-45**.

G.S. § 42-45. Early termination of rental agreement by military personnel.

(a) Any member of the United States Armed Forces who (i) is required to move pursuant to permanent change of station orders to depart 50 miles or more from the location of the dwelling unit, or (ii) is prematurely or involuntarily discharged or released from active duty with the United States Armed Forces, may terminate his rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the member's commanding officer.

(a1) Any member of the United States Armed Forces who is deployed with a military unit for a period of not less than 90 days may terminate his rental agreement for a dwelling unit by providing the landlord with a written notice of termination. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the member's commanding officer. Termination of a lease pursuant to this subsection is effective 30 days after the first date on which the next rental payment is due or 45 days after the landlord's receipt of the notice, whichever is shorter, and payable after the date on which the notice of termination is delivered.

(a2) Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at such time as would have otherwise been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due to the early termination of the tenancy except the liquidated damages provided in subsection (b) of this section. If a member terminates the rental agreement pursuant to this section 14 or more days prior to occupancy, no damages or penalties of any kind shall be due.

(b) In consideration of early termination of the rental agreement, the tenant is liable to the landlord for liquidated damages provided the tenant has completed less than nine months of the tenancy and the landlord has suffered actual damages due to loss of the tenancy. The liquidated damages shall be in an amount no greater than one month's rent if the tenant has completed less than six months of the tenancy as of the effective date of termination, or one-half of one month's rent if the tenant has completed at least six but less than nine months of the tenancy as of the effective date of termination.

(c) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances. Nothing in this section shall affect the rights established by G.S. 42-3. (1987, c. 478, s. 1; 2005-445, s. 4.1.)

➤ **Special Protections in Residential Rentals: Early Lease Termination due to Foreclosure**

Unless an entire large apartment community is being foreclosed and sold, North Carolina law allows tenants to end a lease agreement if a home is being foreclosed.

If the rental home is at a place with fewer than 15 rental units, then once the tenant receives notice of the foreclosure sale, a tenant has the right to end the lease. The tenant must give the landlord 10 days' advance written notice. The tenant must pay rent through the date that the tenant moves out.

The tenant's right to end the lease due to foreclosure is stated at **G.S. § 42-45.2**.

Any tenant who resides in residential real property containing less than 15 rental units that is being sold in a foreclosure proceeding under Article 2A of Chapter 45 of the General Statutes may terminate the rental agreement for the dwelling unit after receiving notice pursuant to G.S. 45-21.17(4) by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 10 days after the date of the notice of sale. Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at the time that would have been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due only to the early termination of the tenancy. (2007-353, s. 3.)

➤ **Federal Legal Protections for Tenants in Foreclosed Homes**

If the home you rent is being foreclosed, you do not have to move right away. Federal law states that on or after May 20 2009, if a tenant has been renting a place that is sold at a foreclosure sale, the home buyer becomes the tenant's landlord. The law is the *Protecting Tenants at Foreclosure Act*, Public Law No. 111-22, §702 (2009).

The new landlord may continue the tenant's lease, of course. The lease terms and rent do not change while the lease stays in effect.

If the new landlord wants to end the lease, the new landlord must give any tenant 90 days' advance written notice. If the lease term has not ended, a tenant has the right to stay and pay rent until the lease ends, and the lease terms and rent do not change. Even a buyer who will use the home as a primary residence must give the tenant 90 days' notice. The lease and rent do not change during the 90 days.

- If you have a lease with a fixed ending date and the time is not up, **OR** if you have a Section 8 Housing Choice Voucher:

If you pay the rent and do not breach the lease, the new landlord cannot evict you until after the lease ends. If you have a Housing Choice Voucher, contact the housing program for advice.

- If the buyer says you must leave sooner than 90 days, you should:

Pay the rent. If the new landlord will not accept the rent, then keep the money and make a written offer to pay. Keep a copy of that offer. Be prepared to pay the rent at an eviction hearing at court.

Then, send a letter. Tell the new landlord about this law and your rights. Keep a copy of the letter.

- If the buyer files an eviction action *before* giving 90 days' notice, you should:

Pay the rent. File a written response (an "Answer") with the court. There is no court fee for filing that.

State in your Answer that the new landlord did not give the notice required by the *Protecting Tenants at Foreclosure Act*, Public Law No. 111-22, §702 (2009).

Go to court on the eviction hearing date. Take to court a copy of your letter, your Answer, and lease, if the lease is written. You must take two sets of copies to court.

- What happens if the tenant does not pay the rent:

In North Carolina, if a tenant fails to pay rent on time, a landlord can give 10 days' notice to pay or move. The notice may be oral or written. Then, if a tenant does not move or pay, the landlord must file a civil eviction action to force a tenant to move.

CHAPTER 4: LATE FEES AND ADMINISTRATIVE FEES

➤ Can a landlord charge fees if a tenant can't pay the rent on time?

Yes. Late fees can be charged only after the rent is five days or more late. A landlord cannot charge the tenant a late fee if the tenant does not pay the water bill on time. A late fee can only be charged one time for each late rent payment. Late fees cannot be deducted from the next rent payment.

North Carolina law allows the landlord to charge up to \$15 or 5% of the monthly rent, whichever is more. If the rent is paid weekly, the legal late fee is \$4.00 or 5% of the weekly rent, whichever is more.

When a tenant has housing assistance, the amount of the late fee is based on the tenant's share of the rent. If the housing program pays its share of the rent late, the landlord cannot charge the tenant a late fee for that.

➤ Can a landlord charge a tenant a fee for taking the tenant to court?

Yes. A landlord may charge a single, one-time fee for court there is a written lease, and if that states that fees may be charged, and if the tenant breaches (breaks) the lease and the landlord sues to evict the tenant. The fee may be for (1) filing a complaint **or** (2) for going to court **or** (3) for going to an appeal hearing at court. Further, if the landlord files a court case to evict the tenant and wins, the tenant may also be required to pay the court costs to the Clerk of Superior Court. Court costs and attorney fees are not the same as a fee that a landlord may charge.

The administrative and late fee law is stated at **G.S. § 42-46**.

(a) In all residential rental agreements in which a definite time for the payment of the rent is fixed, the parties may agree to a late fee not inconsistent with the provisions of this subsection, to be chargeable only if any rental payment is five days or more late. If the rent:

(1) Is due in monthly installments, a landlord may charge a late fee not to exceed fifteen dollars (\$15.00) or five percent (5%) of the monthly rent, whichever is greater.

(2) Is due in weekly installments, a landlord may charge a late fee not to exceed four dollars (\$4.00) or five percent (5%) of the weekly rent, whichever is greater.

(3) Repealed by Session Laws 2009-279, s. 4, effective October 1, 2009, and applicable to leases entered into on or after that date.

(b) A late fee under subsection (a) of this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment may not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default.

(c) Repealed by Session Laws 2009-279, s. 4, effective October 1, 2009, and applicable to leases entered into on or after that date.

(d) A lessor shall not charge a late fee to a lessee pursuant to subsection (a) of this section because of the lessee's failure to pay for water or sewer services provided pursuant to G.S. 62-110(g).

(e) Complaint-Filing Fee. Pursuant to a written lease, a landlord may charge a complaint-filing fee not to exceed fifteen dollars (\$15.00) or five percent (5%) of the monthly rent, whichever is greater, only if the tenant was in default of the lease, the landlord filed and served a complaint for summary ejectment and/or money owed, the tenant cured the default or claim, and the landlord dismissed the complaint prior to judgment. The landlord can include this fee in the amount required to cure the default.

(f) Court-Appearance Fee. Pursuant to a written lease, a landlord may charge a court-appearance fee in an amount equal to ten percent (10%) of the monthly rent only if the tenant was in default of the lease; the landlord filed, served, and prosecuted successfully a complaint for summary ejectment and/or monies owed in the small claims court; and neither party appealed the judgment of the magistrate.

(g) Second Trial Fee. Pursuant to a written lease, a landlord may charge a second trial fee for a new trial following an appeal from the judgment of a magistrate. To qualify for the fee, the landlord must prove that the tenant was in default of the lease and the landlord prevailed. The landlord's fee may not exceed twelve percent (12%) of the monthly rent in the lease.

(h) Limitations on Charging and Collection of Fees.

(1) A landlord who claims fees under subsections (e) through (g) of this section is entitled to charge and retain only one of the above fees for the landlord's complaint for summary ejectment and/or money owed.

(2) A landlord who earns a fee under subsections (e) through (g) of this section may not deduct payment of that fee from a tenant's subsequent rent payment or declare a failure to pay the fee as a default of the lease for a subsequent summary ejectment action.

(3) It is contrary to public policy for a landlord to put in a lease or claim any fee for filing a complaint for summary ejectment and/or money owed other than the ones expressly authorized by subsections (e) through (g) of this section, and a reasonable attorney's fee as allowed by law.

(4) Any provision of a residential rental agreement contrary to the provisions of this section is against the public policy of this State and therefore void and unenforceable.

(5) If the rent is subsidized by the United States Department of Housing and Urban Development, by the United States Department of Agriculture, by a State agency, by a public housing authority, or by a local government, any fee charged pursuant to this section shall be calculated on the tenant's share of the contract rent only, and the rent subsidy shall not be included. (1987, c. 530, s. 1; 2001-502, s. 4; 2003-370, s. 1; 2004-143, s. 5; 2009-279, s. 4.)

CHAPTER 5: TENANT SECURITY DEPOSITS

Landlords can and probably will require you to pay a security deposit. The purpose of the Tenant Security Deposit is to protect the landlord if a tenant does not take good care of the property while living there. The amount of the deposit is governed by law.

The deposit cannot be more than:

- 2 weeks rent if the tenant pays by the week.
- 1 ½ month's rent if the tenant is leasing month-to-month.
- 2 months rent if the tenant is leasing for longer than month-to-month.

The landlord must keep the deposit in a trust account in a North Carolina bank or savings institution, or have a bond from a North Carolina insurance company. This account or bond information must be given to the tenant within 30 days of the start of the lease.

In North Carolina, the law is that a tenant owes rent through the date when the tenant cleans the home, moves everything out, and returns the keys. We strongly encourage tenants to do a final, written inspection together with the landlord. The tenant and landlord should date and sign that inspection paper, and confirm that the tenant has returned the keys. The tenant should keep a copy of the final inspection paper.

If the landlord will not make a final inspection with you, ask someone who is not a relative to do that with you. Ask that person to witness that you have returned the keys to the landlord, and to sign the final inspection paper.

After the tenant has cleaned, moved out and returned the keys, within 30 days the landlord must refund the deposit or must give the tenant a written explanation of why he or she kept any of the money.

If it is not possible for a landlord to reckon the cost for damage repairs within 30 days, the landlord must tell the tenant that in writing within 30 days after the tenant has moved out. Then the landlord must send a written statement or refund the money within the next 30 days.

A landlord can keep the deposit money for:

- Any rent or water or sewer costs that a tenant owes;
- The tenant's failure to complete the term of the lease;
- Damage to the property that is more than normal wear and tear;
- Costs of finding a new tenant if the tenant leaves before lease ends;
- Unpaid bills that become a lien, due to the tenant's occupancy;
- Costs to remove or store a tenant's property after court eviction; or
- The cost of court, if the tenant has been evicted in court.

➤ **What if a landlord doesn't give the tenant's money back?**

If a landlord doesn't return the security deposit, or keeps part and doesn't state why in writing, or keeps more than what the tenant thinks is fair, the tenant should:

- Write the landlord and ask for a refund. Date the letter and keep a copy; or
- Visit the landlord and ask for a refund. Take a friend as witness.
- If that does not work, a tenant can file a small claims court action against the landlord to get the money. A free booklet called "A Guide to Small Claims Court" is available at the Office of the Clerk of Superior Court.

The state laws governing tenant security deposits are as follows, beginning at **G.S. § 42-50**.

Security deposits from the tenant in residential dwelling units shall be deposited in a trust account with a licensed and insured bank or savings institution located in the State of North Carolina or the landlord may, at his option, furnish a bond from an insurance company licensed to do business in North Carolina. The security deposits from the tenant may be held in a trust account outside of the State of North Carolina only if the landlord provides the tenant with an adequate bond in the amount of said deposits. The landlord or his agent shall notify the tenant within 30 days after the beginning of the lease term of the name and address of the bank or institution where his deposit is currently located or the name of the insurance company providing the bond. (1977, c. 914, s. 1.)

G.S. § 42-51

Security deposits for residential dwelling units shall be permitted only for the tenant's possible nonpayment of rent and costs for water or sewer services provided pursuant to G.S. 62-110(g), damage to the premises, nonfulfillment of rental period, any unpaid bills that become a lien against the demised property due to the tenant's occupancy, costs of re-renting the premises after breach by the tenant, costs of removal and storage of tenant's property after a summary ejectment proceeding or court costs in connection with terminating a tenancy. 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.)

G.S. § 42-52

Upon termination of the tenancy, money held by the landlord as security may be applied as permitted in G.S. 42-51 or, if not so applied, shall be refunded to the tenant. In either case the landlord in writing shall itemize any damage and mail or deliver same to the tenant, together with the balance of the security deposit, no later than 30 days after termination of the tenancy and delivery of possession of the premises to the landlord. If the extent of the landlord's claim against the security deposit cannot be determined within 30 days, the landlord shall provide the tenant with an interim accounting no later than 30 days after termination of the tenancy and delivery of possession of the premises to the landlord and shall provide a final accounting within 60 days after termination of the tenancy and delivery of possession of the premises to the landlord. If the tenant's address is unknown the landlord shall apply the deposit as permitted in G.S. 42-51 after a period of 30 days and the landlord shall hold the balance of the deposit for collection by the tenant for at least six months. The landlord may not withhold as damages part of the security deposit for conditions that

are due to normal wear and tear nor may the landlord retain an amount from the security deposit which exceeds his actual damages. (1977, c. 914, s. 1; 2009-279, s. 5.)

If a landlord allows a tenant to have pets, the landlord may charge the tenant a deposit for having a pet in the home. Pet deposits do not have to be refundable. The law requires that the amount of a pet deposit must be "reasonable," but does not limit the amount.

G.S. § 42-53

Notwithstanding the provisions of this section, the landlord may charge a reasonable, nonrefundable fee for pets kept by the tenant on the premises. (1977, c. 914, s. 1.)

➤ What happens to the deposit if the home is sold or foreclosed?

The law below states what happens to the Tenant Security Deposit if the ownership of the home changes. After withholding any lawful amounts from the deposit, the landlord must transfer the deposit to the new owner or refund the deposit to the tenant.

G.S. § 42-54

Upon termination of the landlord's interest in the dwelling unit in question, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or his agent shall, within 30 days, do one of the following acts, either of which shall relieve him of further liability with respect to such payment or deposit:

- (1) Transfer the portion of such payment or deposit remaining after any lawful deductions made under this section to the landlord's successor in interest and thereafter notify the tenant by mail of such transfer and of the transferee's name and address; or
- (2) Return the portion of such payment or deposit remaining after any lawful deductions made under this section to the tenant. (1977, c. 914, s. 1.)

➤ What are my legal remedies if the landlord won't refund my deposit?

The following law states that if a landlord does not give you a written statement about money withheld from your deposit or fails to refund your money, you may sue the landlord. If a court finds that a landlord has deliberately refused to follow the law, the landlord cannot keep any of the deposit money. The landlord may also be ordered to pay your attorney fees, if any.

G.S. § 42-55

If the landlord or the landlord's successor in interest fails to account for and refund the balance of the tenant's security deposit as required by this Article, the tenant may institute a civil action to require the accounting of and the recovery of the balance of the deposit. The willful failure of a landlord to comply with the deposit, bond, or notice requirements of this Article shall void the landlord's right to retain any portion of the tenant's security deposit as otherwise permitted under G.S. 42-51.

In addition to other remedies at law and equity, the tenant may recover damages resulting from noncompliance by the landlord; and upon a finding by the court that the party against whom judgment is rendered was in willful noncompliance with this Article, such willful noncompliance is against the public policy of this State and the court may award attorney's fees to be taxed as part of the costs of court. (1977, c. 914, s. 1; 2009-279, s. 6.)

CHAPTER 6: EVICTIONS

Landlords can pursue eviction **only** through the civil courts. If a landlord tries to evict you some other way, you should ask local law enforcement for help and talk with a lawyer.

It is against the law for a landlord to try to evict a tenant by changing locks, or by turning off water, electricity or heat, or by refusing to provide necessary repairs or services. If the water or utility service account belongs to the landlord and the landlord closes the account, you have the right to open an account of your own.

A landlord may sue to evict a tenant for the following four reasons :

➤ **Non-payment of Rent**

The landlord must demand the rent and wait 10 days before filing a court complaint against the tenant. To “demand” the rent, the landlord must tell the tenant to pay or move out. The demand may be oral or written. A landlord may talk with the tenant in person, or call the tenant, or may write the tenant a letter about the rent and explain that the tenant will be evicted unless the rent is paid. Then the landlord must wait 10 days before filing the court case.

➤ **Staying after the Lease has Ended**

If a tenant stays after the rental period ends, either because the lease ended or the landlord told the tenant to move out, and if the landlord does not continue to accept the rent, a court may evict the tenant for “holding over.”

The landlord must give the tenant a proper notice to move:

- 2 days if the tenant pays rent every week
- 7 days if the tenant leases month-to-month
- 1 month if the lease is year-to-year
- 30 days if tenant owns a mobile home and rents the lot.

The notice does not have to be in writing unless written notice is required in the lease. If the landlord can prove that the lease has been terminated, the tenant can be evicted.

➤ **Breach of the Lease**

If there is a written lease, a landlord may claim that a tenant broke (“breached”) the lease by causing damage, disturbing the neighbors, having unauthorized pets, making an alteration to the property, being involved in illegal activities, having unauthorized occupants or guests, or for other actions.

In some situations a landlord does not have to give notice before starting the eviction process, as long as the landlord is claiming that the tenant breached the lease. However, there must be a special clause in a written lease that allows the landlord to evict the tenant before the lease ends and without advance notice. It is called a forfeiture clause.

➤ **Eviictions for Criminal Activities**

In North Carolina, both public and private landlords can evict tenants or household members who are involved in criminal activity. In order for the "criminal activity eviction" laws to apply, a tenant, household member or guest does not have to be charged with an offense or convicted of an offense.

The term "criminal activity" is not limited to drug offenses and includes all criminal activity that threatens the health, safety or right of peaceful enjoyment of the premises, or places that are nearby. The landlord also has the right to evict a tenant for allowing any person to re-enter the home property after that person has been barred and ordered not to return by a housing program or a court.

The law in North Carolina is that once a landlord begins the eviction process, if the landlord accepts the rent, then the landlord has given up or "waived" the right to evict the tenant.

That is not the rule in a "criminal activity eviction" case. In such a case a landlord can accept the rent and still evict a tenant. That is stated in the statute below.

G.S. § 42-73

A landlord shall be entitled to collect rent due and owing with knowledge of any illegal acts that violate the provisions of this act without such collection constituting a waiver of the alleged defaults. (1995, c. 419, s. 1.)

▪ Complete, Partial and Conditional Evictions due to Criminal Activity

In a "criminal activity eviction" case a landlord has the right to seek eviction of everyone in the home. That is called a "*complete*" eviction. The "complete" eviction law is stated in part (a) of the statute below.

A "*partial*" eviction is also possible. A court might decide to order the removal of one or more members of the household, and allow the tenant and others to stay. That law is stated in part (b) of the statute below.

If that happens, the tenant and any others can stay only if they abide by set conditions. That is called the "*conditional*" part of the eviction, and is stated in part (c) of the statute below.

G.S. § 42-63

(a) Grounds for Complete Eviction. Subject to the provisions of G.S. 42-64 and pursuant to G.S. 42-68, the court shall order the immediate eviction of a tenant and all other residents of the tenant's individual unit where it finds that:

- (1) Criminal activity has occurred on or within the individual rental unit leased to the tenant; or
- (2) The individual rental unit leased to the tenant was used in any way in furtherance of or to promote criminal activity; or
- (3) The tenant, any member of the tenant's household, or any guest has engaged in criminal activity on or in the immediate vicinity of any portion of the entire premises; or

(4) The tenant has given permission to or invited a person to return or reenter any portion of the entire premises, knowing that the person has been removed and barred from the entire premises pursuant to this Article or the reasonable rules and regulations of a publicly assisted landlord; or

(5) The tenant has failed to notify law enforcement or the landlord immediately upon learning that a person who has been removed and barred from the tenant's individual rental unit pursuant to this Article has returned to or reentered the tenant's individual rental unit.

(b) Grounds for Partial Eviction and Issuance of Removal Orders. The court shall, subject to the provisions of G.S. 42-64, order the immediate removal from the entire premises of any person other than the tenant, including an adult or minor member of the tenant's household, where the court finds that such person has engaged in criminal activity on or in the immediate vicinity of any portion of the leased residential premises. Persons removed pursuant to this section shall be barred from returning to or reentering any portion of the entire premises.

(c) Conditional Eviction Orders Directed Against the Tenant. Where the court finds that a member of the tenant's household or a guest of the tenant has engaged in criminal activity on or in the immediate vicinity of any portion of the leased residential premises, but such person has not been named as a party defendant, has not appeared in the action or otherwise has not been subjected to the jurisdiction of the court, a conditional eviction order issued pursuant to subsection (b) of this section shall be directed against the tenant, and shall provide that as an express condition of the tenancy, the tenant shall not give permission to or invite the barred person or persons to return to or reenter any portion of the entire premises. The tenant shall acknowledge in writing that the tenant understands the terms of the court's order, and that the tenant further understands that the failure to comply with the court's order will result in the mandatory termination of the tenancy pursuant to G.S. 42-68. (1995, c. 419, s. 1.)

▪ What are a Tenant's Legal Defenses?

In a "criminal activity eviction" case, a judge considers the tenant's entire situation and history at the rental home. However, a tenant cannot defend against the eviction just by claiming that the criminal activity only happened once, or by showing that the person who was involved has moved out.

G.S. § 42-67

It shall not be a defense to an action brought pursuant to this Article that the criminal activity was an isolated incident or otherwise has not recurred. Nor is it a defense that the person who actually engaged in the criminal activity no longer resides in the tenant's individual rental unit. However, evidence of such facts may be admissible if offered to support affirmative defenses or grounds for an exemption pursuant to G.S. 42-64. (1995, c. 419, s. 1.)

Our state law provides tenants with a different legal defense in a "criminal activity eviction" case. A tenant must prove several things, and can only use the defense one time while living at the rental home.

To defend against the eviction, the tenant must prove that she or he, and most of the household members and guests were not involved. A tenant must also prove that she or he did not know about what happened, and had no reason to know or expect it. Last, the tenant must show a judge that she or he did everything reasonably possible to prevent the criminal activity from happening.

G.S. § 42-64

(a) **Affirmative Defense.** The court shall refrain from ordering the complete eviction of a tenant pursuant to G.S. 42-63(a) where the tenant has established that the tenant was not involved in the criminal activity and that:

(1) The tenant did not know or have reason to know that criminal activity was occurring or would likely occur on or within the individual rental unit, that the individual rental unit was used in any way in furtherance of or to promote criminal activity, or that any member of the tenant's household or any guest has engaged in criminal activity on or in the immediate vicinity of any portion of the entire premises; or

(2) The tenant had done everything that could reasonably be expected under the circumstances to prevent the commission of the criminal activity, such as requesting the landlord to remove the offending household member's name from the lease, reporting prior criminal activity to appropriate law enforcement authorities, seeking assistance from social service or counseling agencies, denying permission, if feasible, for the offending household member to reside in the unit, or seeking assistance from church or religious organizations.

Notwithstanding the court's denial of eviction of the tenant, if the plaintiff has proven that an evictable offense under G.S. 42-63 was committed by someone other than the tenant, the court shall order such other relief as the court deems appropriate to protect the interests of the landlord and neighbors of the tenant, including the partial eviction of the culpable household members pursuant to G.S. 42-63(b) and conditional eviction orders under G.S. 42-63(c).

(b) **Subsequent Affirmative Defense to a Complete Eviction.** The affirmative defense set forth in subsection (a) of this section shall not be available to a tenant in a subsequent action brought pursuant to this Article unless the tenant can establish by clear and convincing evidence that no reasonable person could have foreseen the occurrence of the subsequent criminal activity or that the tenant had done everything reasonably expected under the circumstances to prevent the commission of the second criminal activity.

(c) **Exemption.** Where the grounds for a complete eviction have been established, the court shall order the eviction of the tenant unless, taking into account the circumstances of the criminal activity and the condition of the tenant, the court is clearly convinced that immediate eviction or removal would be a serious injustice, the prevention of which overrides the need to protect the rights, safety, and health of the other tenants and residents of the leased residential premises. The burden of proof for the exemption set forth shall be by clear and convincing evidence. (1995, c. 419, s. 1.)

- **What happens if the tenant gets to stay but a household member has to leave?**

After a court grants a "criminal activity eviction," it is illegal for anyone to violate the court's order or interfere with enforcement of the order.

A tenant who is allowed to stay due to a partial or conditional eviction
must tell and instruct household members and guests about the situation.

If the tenant violates the order, the court must evict the tenant.

G.S. § 42-65

Any person who knowingly violates any order issued pursuant to this Article or who knowingly interferes with, obstructs, impairs, or prevents any law enforcement officer from enforcing or executing any order issued pursuant to this Article, shall be subject to criminal contempt under Article 1 of Chapter 5A of the General Statutes. Nothing in this section shall be construed in any way to preclude or preempt prosecution for any other criminal offense. (1995, c. 419, s. 1.)

G.S. § 42-66

(a) A motion to enforce an eviction or removal order issued pursuant to G.S. 42-63(b) or (c) shall be heard on an expedited basis and within 15 days of the service of the motion.

(b) Mandatory Eviction. The court shall order the immediate eviction of the tenant where it finds that:

(1) The tenant has given permission to or invited any person removed or barred from the leased residential premises pursuant to this Article to return to or reenter any portion of the premises; or

(2) The tenant has failed to notify appropriate law enforcement authorities or the landlord immediately upon learning that any person who had been removed and barred pursuant to this Article has returned to or reentered the tenant's individual rental unit; or

(3) The tenant has otherwise knowingly violated an express term or condition of any order issued by court pursuant to this Article. (1995, c. 419, s. 1.)

- **There are different, faster civil court procedures**

An eviction based on "criminal activity" takes priority in the civil courts. The cases are processed quickly. The rules for that are in the statutes below.

G.S. § 42-68

Where the complaint is filed as a small claim, the expedited process for summary ejection, as provided in Article 3 of this Chapter and Chapter 7A of the General Statutes, applies. Where the complaint is filed initially in the district court or a judgment by the magistrate is appealed to the district court, the procedure in G.S. 42-34(b) through (g), if applicable, and the following procedures apply:

(1) Expedited Hearing. When a complaint is filed initiating an action pursuant to this Article, the court shall set the matter for a hearing which shall be held on an expedited basis and within the first term of court falling after 30 days from the service of the complaint on all defendants or from service of notice of appeal from a magistrate's judgment, unless either party obtains a continuance. However, where a defendant files a counterclaim, the court shall reset the trial for the first term of court falling after 30 days from the defendant's service of the counterclaim.

(2) Standards for Continuances. The court shall not grant a continuance, nor shall it stay the civil proceedings pending the disposition of any related criminal proceedings, except as required to complete permitted discovery, to have the plaintiff reply to a counterclaim, or for compelling and extraordinary reasons or on application of the district attorney for good cause shown.

(3) When Presented. The defendant in an action brought in district court pursuant to this Article shall serve an answer within 20 days after service of the summons and complaint, or within 20 days after service of the appeal to district court when the action was initially brought in small claims court. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer.

(4) Extensions of Time for Filing. The parties to an action brought pursuant to this Article shall not be entitled to an extension of time for completing an act required by subdivision (3) of this section, except for compelling and extraordinary reasons.

(5) Default. A party to an action brought pursuant to this Article who fails to plead in accordance with the time periods in subdivision (3) of this section shall be subject to the provisions of G.S. 1A-1, Rule 55.

(6) Rules of Civil Procedure. Unless otherwise provided for in this Article, G.S. 1A-1, the Rules of Civil Procedure, shall apply in the district court to all actions brought pursuant to this Article. (1995, c. 419, s. 1.)

G.S. § 42-70

(a) The parties to an action brought pursuant to this Article shall be entitled to conduct discovery, if the action is filed originally in or appealed to the district court, only in accordance with this section.

(b) Any defendant must initiate all discovery within the time allowed by this Article for the filing of an answer or counterclaim.

(c) The plaintiff must initiate all discovery within 20 days of service of an answer or counterclaim by a defendant.

(d) All parties served with interrogatories, requests for production of documents, and requests for admissions under G.S. 1A-1, Rules 33, 34, and 36 shall serve their responses within 20 days.

(e) Upon application by the plaintiff, or agreement of the parties, the court shall issue a preliminary injunction against all alleged illegal activity by the defendant or other identified parties who are

residents of the individual rental unit or guests of defendants, pending the completion of discovery and any other wait before the trial has occurred. (1995, c. 419, s. 1.)

- **What is proof of "criminal activity?"**

Evidence of "criminal activity" might be someone's observation of suspicious or violent behavior. *Regardless* of whether there has been a criminal charge, citation, warrant, prosecution, or court proceeding, a landlord can seek an eviction based on "criminal activity"

The law is that when there has been a court proceeding and conviction, or a finding that a juvenile is delinquent, that is proof that "criminal activity" happened. The criminal court records, police reports and records, and even sealed records may be used in the eviction case. The following statutes address the evidence and records that can be used.

G.S. § 42-69

(a) Criminal Proceedings, Conviction, or Adjudication Not Required. The fact that a criminal prosecution involving the criminal activity is not commenced or, if commenced, has not yet been concluded or has terminated without a conviction or adjudication of delinquency shall not preclude a civil action or the issuance of any order pursuant to this Article.

(b) Effect of Conviction or Adjudication. Where a criminal prosecution involving the criminal activity results in a final criminal conviction or adjudication of delinquency, such adjudication or conviction shall be considered in the civil action as conclusive proof that the criminal activity occurred.

(c) Admissibility of Criminal Trial Recordings or Transcripts. Any evidence or testimony admitted in the criminal proceeding, including recordings or transcripts of the adult or juvenile criminal proceedings, whether or not they have been transcribed, may be admitted in the civil action initiated pursuant to this Article.

(d) Use of Sealed Criminal Proceeding Records. In the event that the evidence or records of a criminal proceeding which did not result in a conviction or adjudication of delinquency have been sealed by court order, the court in a civil action brought pursuant to this Article may order such evidence or records, whether or not they have been transcribed, to be unsealed if the court finds that such evidence or records would be relevant to the fair disposition of the civil action. (1995, c. 419, s. 1.)

G.S. § 42-72

A law enforcement agency may make available to any person or entity authorized to bring an action pursuant to this Article any police report or edited portion thereof, or forensic laboratory report or edited portion thereof, concerning criminal activity committed on or in the immediate vicinity of the leased residential premises. A law enforcement agency may also make any officer or officers available to testify as a fact witness or expert witness in a civil action brought pursuant to this Article. The agency shall not disclose such information where, in the agency's opinion, such disclosure would jeopardize an investigation, prosecution, or other proceeding, or where such disclosure would violate any federal or State statute. (1995, c. 419, s. 1.)

- **Witness and Community Protection**

Our state laws allow courts to protect witnesses and issue restraining orders in eviction cases when criminal activity claims are made. The following laws state what the courts can do.

G.S. § 42-71

If proof necessary to establish the grounds for eviction depends, in whole or in part, upon the affidavits or testimony of witnesses who are not peace officers, the court may, upon a showing of prior threats of violence or acts of violence by any defendant or any other person, issue orders to protect those witnesses, including the nondisclosure of the name, address, or any other information which may identify those witnesses. (1995, c. 419, s. 1.)

G.S. § 42-73

The district court shall have the authority at any time to issue a temporary restraining order, grant a preliminary injunction, or take such other actions as the court deems necessary to enjoin or prevent the commission of criminal activity on or in the immediate vicinity of leased residential premises, or otherwise to protect the rights and interests of all tenants and residents. A violation of any such duly issued order or preliminary relief shall subject the violator to civil or criminal contempt. (1995, c. 419, s. 1.)

CHAPTER 7:

GENERAL STATUTES DEFINITIONS

North Carolina General Statutes § 42-59, Criminal Activity Evictions

As used in this Article:

- (1) "Complete eviction" means the eviction and removal of a tenant and all members of the tenant's household.
- (2) "Criminal activity" means (i) activity that would constitute a violation of G.S. 90-95 other than a violation of G.S. 90-95(a)(3), or a conspiracy to violate any provision of G.S. 90-95 other than G.S. 90-95(a)(3); or (ii) other criminal activity that threatens the health, safety, or right of peaceful enjoyment of the entire premises by other residents or employees of the landlord.
- (3) "Entire premises" or "leased residential premises" means a house, building, mobile home, or apartment, whether publicly or privately owned, which is leased for residential purposes. These terms include the entire building or complex of buildings or mobile home park and all real property of any nature appurtenant thereto and used in connection therewith, including all individual rental units, streets, sidewalks, and common areas. These terms do not include a hotel, motel, or other guest house or part thereof rented to a transient guest.
- (4) "Felony" means a criminal offense that constitutes a felony under North Carolina law.
- (5) "Guest" means any natural person who has been given express or implied permission by a tenant, a member of the tenant's household, or another guest of the tenant to enter an individual rental unit or any portion of the entire premises.
- (6) "Individual rental unit" means an apartment or individual dwelling or accommodation which is leased to a particular tenant, whether or not it is used or occupied or intended to be used or occupied by a single family or household.
- (7) "Landlord" means a person, entity, corporation, or governmental authority or agency who or which owns, operates, or manages any leased residential premises.
- (8) "Partial eviction" means the eviction and removal of specified persons from a leased residential premises.
- (9) "Resident" means any natural person who lawfully resides in a leased residential premises who is not a signatory to a lease or otherwise has no contractual relationship to a landlord. The term includes members of the household of a tenant.
- (10) "Tenant" means any natural person or entity who is a named party or signatory to a lease or rental agreement, and who occupies, resides in, or has a legal right to possess and use an individual rental unit. (1995, c. 419, s. 1.)

CHAPTER 8: EVICTION APPEALS

A tenant may file an appeal if she or he disputes the Magistrate's eviction decision. An appeal must be done within ten (10) days *after* the Magistrate's decision is signed and filed. A tenant must file appeal documents at the Office of the Clerk of Superior Court. The tenant must give the Clerk a reliable mailing address, so that the tenant can receive notices about court.

A tenant who appeals is not required to stay at the rental home in order to make an appeal. The tenant may move and still dispute the Magistrate's decision at an appeal hearing, at district court. If the tenant files an appeal and pays rent to the court, the tenant may remain at the rental home until there is a district court appeal hearing.

➤ Forms and Payments

Payments to the court must be made by certified check, money order, or cash. Tenants should take care to keep receipts of all payments.

If the tenant wishes to stay in the rental home while the appeal is pending, then the tenant must pay the rent into the Clerk of Court's office. The tenant does not pay rent to the landlord while the appeal is pending.

There are three appeal documents: the *Notice of Appeal*, the *Bond*, and the *Petition*. The forms are available at the Clerk's office, at no cost. The Clerk cannot give legal advice about court documents or cases, and does not provide Notary service.

There is an appeal filing fee that must be paid to the Clerk. As of this writing, the fee is \$150.00. The filing fee payment is not required if a person is allowed to appeal as an *Indigent* (a low-income person). The *Petition to Sue or Appeal as an Indigent* is the document used to request *Indigent* status. More information about that is below.

All tenants who appeal must sign and file a *Notice of Appeal* document.

All tenants who appeal and remain at the rental home must also sign and file a *Bond to Stay Execution* (a bond to stop the enforcement of the judgment). By signing that, the tenant agrees to pay the rent to the court while the appeal is pending. The eviction is "stayed."

When the appeal is filed, a tenant who remains at the rental home must pay the court

- the rent in arrears ("back rent"), *unless* the tenant is an Indigent,
- the pro-rated rent, from the hearing date through the end of the month, *and*
- each month's rent, as that becomes due.

During the appeal period, if a tenant makes monthly rent payments to the court, the payments are not late. The tenant does not owe a landlord any late fee for those months.

Until there is an appeal hearing in district court, a tenant must pay the rent to the court as required, and pay on time. If the tenant fails to do that, then the tenant loses the right to stay at the home. The landlord can get a Writ (order) to have the tenant evicted. The Sheriff will padlock the home. Even if that happens, the tenant has the right to dispute the landlord's claims at the appeal hearing.

➤ **Low-income Persons and Appeals**

Low-income persons may ask for a waiver of the appeal filing fee. The *Petition to Sue or Appeal as an Indigent* is the document used to ask for that. By law, an Indigent tenant does not have to pay the appeal filing fee or the rent in arrears. Indigents must pay the court the pro-rated rent, and the monthly rent as it becomes due.

A tenant who receives Food Stamps benefits, or SSI income, or Work First Family Assistance has the legal right to appeal as an Indigent. Those tenants must show the Clerk an EBT card or other proof of receipt of Food Stamps, SSI income or Work First income. Those tenants are not required to complete other forms, or submit other information.

People who do not receive SSI, Work First or Food Stamps benefits also may file the *Petition* and ask to be granted Indigent status. The court decides about that on an individual basis. The court may require a person to complete more forms, or submit income and expense information.

The *Petition to Sue or Appeal as an Indigent* must be signed before a Notary Public. A Notary must see a person's photo ID in order to witness a signature on a document.

➤ **Filing the Appeal**

The tenant must complete the appeal documents and make two sets of copies. The tenant must take those to the Clerk's office. At the time the tenant files the appeal, the tenant must pay the filing fee and rent as stated here.

The Clerk will keep the original documents and file-stamp all the documents. The tenant keeps one set of copies, and may give the other copies to her or his lawyer, if any. When the tenant files the appeal, the tenant must mail only one form, the *Notice of Appeal*, to the landlord. In some counties, the Clerk mails the *Notice of Appeal* to the landlord.

➤ **Eviction Appeal Hearings**

If the first eviction hearing was in small claims court, the appeal hearing will be in district court. An appeal hearing is a new opportunity for each party to state her or his position. Each party may offer witness testimony, records, and other evidence. The Clerk mails the notice of the hearing to the parties. If a tenant does not attend the appeal hearing, then the appeal will be dismissed. The Magistrate's decision will then become final. After that, the landlord can get a padlocking order and remove the tenant from the home.

If the tenant and landlord have a hearing in district court, the judge will consider the evidence and make a decision. There is a 30 day appeal period after that. The next appeal is to the North Carolina Court of Appeals. The appeal and bond process is technical and complicated. Most people need the help of a lawyer to make such appeals.

CHAPTER 9: NORTH CAROLINA PADLOCKING PROCEDURES

After a small claim court order (“judgment”) for eviction takes place, there is a ten day appeal period. After the judgment, a tenant may move out or appeal within 10 days.. If the tenant has not moved out or appealed, or fails to pay a bond to the Clerk of Court, then the landlord can obtain a court order for padlocking of the home. The order is called a Writ. The Clerk of Court issues the Writ. The Writ orders the Sheriff to remove the tenant and padlock the home, within seven days. Then the Sheriff will do these things:

- The Sheriff will *mail* the tenant a written notice, stating the date and time when the home will be padlocked.
- The Sheriff will meet the landlord at the rental property.
- The Sheriff will order all occupants to leave.
- The Sheriff will padlock the doors.

After that, a *tenant can be arrested for trespassing* if the tenant enters the home without the owner’s consent.

If a tenant leaves personal property in the home after padlocking:

- The law is that the tenant has ten days to remove all property from the home.
- The tenant must contact the landlord to arrange a time when the tenant will remove her or his property.
- The law is that the landlord must give the tenant one opportunity to remove personal property. That opportunity must be during regular business hours.

Tenants should contact the Sheriff and a lawyer for help if a landlord does not follow the law.

Important

When padlocking happens, be sure to remove all pets. Remove baby care items, all medicines, medical equipment, and medical records. Take wallets, handbags, toiletries, and clothing for several days. Remove things that can spoil. Take all valuables and all important papers, including birth records, bills, school records, licenses, immigration records, motor vehicle titles, insurance records, military documents, and so forth.

Ten days after padlocking happens it is lawful for a landlord to dispose of a tenant’s property.

What if the Sheriff padlocks the home in less than seven days after the Writ is issued? Then the tenant will have ten days to contact the landlord about removing her or his property, as stated above.

Chapter 10:

CODE ENFORCEMENT PROCEDURES

Minimum standards with maximum enforcement.

WHO ENFORCES THE MINIMUM HOUSING CODE?

Housing Specialists or Code Inspectors enforce the Minimum Housing Code (MHC) under the authority of the Housing Code Administrator whose responsibility is to investigate dwelling conditions to determine if they are fit for human habitation as defined by the MHC

STANDARD ENFORCEMENT PROCESSES

The Code enforcement officer enforces the Minimum Housing Code through a standardized administrative process. This process varies depending on the type of violation that is being addressed. Processes falling under the MHC include:

- MHC housing processes
- Board and Clean
- Weedy lot/Junk and Debris
- Junked, Abandoned, and/or Hazardous Vehicles
- Unsafe Building

DEFINITIONS OF STANDARD ENFORCEMENT PROCESSES

Abandoned Vehicle

Is left on any street or highway for longer than seven days; or is left on property owned or operated by the City for longer than twenty four (24) hours; or is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two (2) hours.

Board and Clean

Vacant and/or abandoned structures which may contain junk and debris and be accessible to the general public.

Hazardous Vehicle

A breeding ground or harbor for mosquitoes or other insects, snakes rats or other pests; or a point of growth and or other vegetation over (12) inches in height; or a point of collection for pools of water, concentration of gas oil or other hazardous materials; or so located that there is a danger of the vehicle falling or turning over; or a place in which debris, bottles or other solid waste is discarded and is present within the vehicle; or. the creation of another similar condition(s) or circumstance(s) which exposes the general public to safety or health hazards.

Junked Vehicle

Is partially dismantled or wrecked; or cannot be self propelled or move in the manner which it was originally intended to move; or is more than (5) years old and appears to be worth less than one hundred dollars (\$100.00).

Repair Only

Structures with estimated repairs less than 50% of the assessed tax value.

Repair or Demolish

Structures with estimated repairs exceeding 50% of the assessed tax value.

Weedy Lot/Junk and Debris

Unmaintained accumulations of dense weeds, grass, vines or briars over twelve (12) inches in height, and within either one hundred (100) feet of an abutting public street or fifty (50) feet of a primary residential structure, not including detached accessory structure, shall be prohibited if deemed to constitute a public nuisance by the administrator. A public nuisance in this provision is defined as conditions that serve as a harborage for rodents, vermin, mosquitoes and other pests and represents a detriment, danger or hazard to the health, safety and welfare of the residents of the city's jurisdiction. Such accumulations of growth shall be cleared and cut to no more than six (6) inches in height.

Unsafe Building Condemnation

Every building that shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad conditions of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of the building.

Although the time and processes vary according to violation type, the basic process is outlined below.‡

OVERVIEW OF THE MINIMUM HOUSING CODE PROCESS

Step 1: Inspection

Inspections may be started by:

- Tenant complaints; or
- CENAT (*Code Enforcement Nuisance Abatement Team*) a multi-departmental proactive team that combines the enforcement powers of zoning, police, housing, solid waste, inspections and other city departments. This team conducts inspections in designated neighborhoods; or
- Code Inspectors; or
- By petition from five residents of the City of Durham, 18 years of age or older.

During the inspection process, the code enforcement officer inspects residential structures to see if the unit has any violations of the MHC. If no violations are found then the case is closed. If violations are found the code enforcement officer proceeds to step 2 of the housing code process.

Step 2: Title Search

The title search process establishes a history of ownership of the property. The search determines the legal name and address of the owners and the parties in interest to ensure proper notification. Parties in interest who must be may include, but are not limited to:

- trustees under Deeds of Trust,
- judgment creditors,
- lien holders, heirs, and
- possessors (tenants).

Step 3: Complaint and Notice

The complaint and notice (C & N) that is sent provides the property owner and parties with a list of the minimum housing code violations and establishes a hearing date, 30 days from the mailing of the notice letter. At this step in the process a notice of Lis Pendens is filed by the title exam staff with the office of the Clerk of Court. This Lis Pendens notice gives potential buyers notice of pending legal action. In unsafe building cases the MHC allows the property owner only 10 days from the mailing date to request a hearing.

Step 4: Service of Complaint and Notice

The complaint and notice must be mailed to owners and all parties in interest by:

- First class mail
- Certified or registered mail
- In person
- By publication
- Posting on the property

To obtain proper service to property owner(s), notices must be sent by certified or registered mail and regular mail. If either is claimed by the owner service will be deemed sufficient. In instances where the owner(s) of the property are unknown, and the code enforcement officer has exercised reasonable diligence in locating the owner, the City may serve the complaint and notice as well as the Finding of Fact and Order by publication in a newspaper that has general circulation in the city. When service is made by publication, notices of the pending proceeding shall be posted in a conspicuous place on the premises.

Notice of violation

In weedy lots and junk and debris processes, property owners are given 10 days from the receipt of the notice to request an administrative hearing and 15 days to comply with the notice. If the owner fails to comply with the notice of violations the cleanup will be bid out to a contractor and the cost of the work performed will be placed as a lien on the property.

Step 5: Hearing

A hearing is conducted to allow consideration by the Housing Code Administrator or his designee of any statements or evidence presented by the property owner. Information presented at the hearing includes but is not limited to:

- the date of inspection, dates of letters sent, date complaint and notice.
- evidence of receipt of complaint and notice
- detailed descriptions of code deficiencies including photos, location, and estimated cost to repair
- detailed work plan
- repairs made by the owner

Step 6: Service of Finding of Fact

The Finding of Fact and Order for demolition process and the unsafe building process each has a 60-day period in which the owner must bring the property into compliance with the Minimum Housing Code. The Finding of Fact for a "repair only" process carries a 30-day deadline for compliance.

The Finding of Fact and Order includes:

- Evidence
- An order to bring the property into compliance
- A compliance date or date of expiration
- Any fines and penalties the owner may be subject to in the event of noncompliance
- Date to appeal ~~by~~

An owner can appeal the Code Administrator's decision after the complaint and notice or after the Finding of Fact. There are two administrative bodies that can hear appeals are the Housing Appeals Board and the Community Life Court.

Step 7: Civil Penalties

Civil Penalties begin to accrue on a property after the expiration of the Finding of Fact at a rate of \$100.00 for the first day of non-compliance and \$10.00 day for each additional day. Refer to section 6-158 Enforcement for current civil penalty amounts.

Step 8: Ordinance

If the owner(s) fails to comply with an order, fails to repair or demolish, the Code Administrator or her/his designee may:

- Present the case to the Housing Appeals Board to obtain an order to demolish the structure.
- The Housing Appeals Board (HAB) is a quasi-judicial board that is appointed by City Council. The HAB hears cases that the repairs exceed 50% of the assessed tax value.
- In addition to issuing orders the Housing Appeals Board can
- Hear appeals
- Grant extensions of time

Step 9: Demolition and Lien

With approval from the HAB, a demolition order may be issued for properties that fail to come into compliance with the order to repair or demolish. Once the City has bid out the demolition and the services are complete then a lien is placed on the property for the cost of services rendered. The property owner is also responsible for any applicable fines and penalties that have accrued for noncompliance of the order.

Minimum housing code violators may also be taken to Community Life Court:

Community Life Court (CLC) is a criminal court that City and County agencies utilizes for noncompliance cases that are in violation of local and state codes including housing, fire, solid waste, building and zoning standards. CLC rules on housing cases with estimated repairs that are less than 50% of the assessed tax value. CLC also hears severe weedy lot and junk vehicle cases. CLC has the power to impose fines and imprison violators for noncompliance with state and local codes.

howcome the section above is in boldface and italics?

Final Step: Compliance

The MHC process is complete when the property is brought into compliance with the minimum housing code. This can be **achieved by ???**, in the case of the Once the property is in compliance with the MHC the owner receives a certificate of completion.

<http://www.municode.com/resources/gateway.asp?pid=10312&sid=33>.

Chapter 11 SOLID WASTE, ZONING ENFORCEMENT, PUBLIC WORKS (STORMWATER), WATER MANAGEMENT

Solid Waste

BASIC OVERVIEW

The mission of the Solid Waste Management Department is to manage the municipal solid waste, household hazardous waste, recyclables, and disposal services in a manner that is environmentally sound, cost-effective, and safe. Below are some of the code sections that have been significant to homes occupied by tenants.

Section 58

Article I - In General:

58-3. No non-city collection of garbage/recyclables set out for city collection

58-4. Private refuse hauling vehicle must be approved by county health department

58-5. Refuse disposal within city subject to direction of director and county health department

58-6. No loose dogs on garbage collection day that results in dogs turning over containers and scattering contents

Article II - Receptacles:

58-31. Households, stores, etc. must provide proper receptacles as defined in SWM rules unless the city provides them

58-32. The director must provide roll-out garbage collection and stationary container collection

58-33. Receptacles must be substantial metal or plastic, watertight, and with tight-fitting covers and strong handles

58-34. Receptacles with defects liable to hamper or injure collectors shall not be used and shall promptly be replaced

58-35. Receptacles must be constructed and maintained to prevent the entrance of flies

58-36. No deliberate damage to a cart or bin provided by the city

58-37. The director can authorize centralized collection locations to single-family detached subdivisions that qualify for roll-out collection

58-38. The director can authorized stationary container collection to developments that qualify for roll-out collection, at roll-out cost

58-65. The following must use stationary containers:

Customers who generate more than 4 roll-out carts of garbage

Multi-family dwellings under 55-66

Locations as determined by the director for specified reasons

Commercial developments with 4 or more businesses

58-66. Multi-family dwellings in any development with at least one building with 5 or more units must use stationary container facilities - the required numbers are specified

Condo and townhome developments receiving backyard collection in 1992 are grandfathered and can receive either stationary container or roll-out collection

58-67. Multi-family requirements apply to all new construction

58-68. Location of stationary containers must meet certain criteria

58-69. The director can grant variances of the stationary container requirements for specified reasons after hearing/application

Article III - Preparation, etc. of Refuse and Recyclables For Collection

58-97. All garbage must be in bags; no liquid; recyclables must be separated from garbage and placed in separate bin for collection; no recyclables in garbage receptacle

58-98. Yard waste must be in biodegradable paper bags or yard waste carts or in bundles no longer than 4 feet long/18 inches in diameter/75 lbs/no single piece of wood more than 6 inches in diameter.

58-99. Large amounts of tree and shrub trimmings will be handled under SWM rules and for a fee

58-100. No use of stationary containers by people who do not own or occupy the property

58-101. Animal litter must be placed in a securely tied bag

58-102. Hypodermic syringes and needles must be placed in puncture-resistant cartons with tight fitting lids

58-103. Separate receptacles must be used for recyclables collected by the city or city's contractor

58-104. Recycling drop-off centers may be used only for depositing types of recyclables collected by the city/city's contractor, and they must be clean

58-105. All stationary containers reserved for recyclables must be used for that purpose only; no mixing of refuse with recyclables

Article IV - Removal, Disposition, etc.

58-124. Garbage etc. in proper receptacles and at accessible locations shall be removed under regulations of the director and subject to this article

58-125. Collection schedules shall be determined by the director

Businesses that generate more than 2 cubic yards of refuse each week (approx. 4 roll-out carts) must use stationary containers Durham

58-126. Refuse of all kinds must be placed outside of buildings at easily accessible locations

58-127. All businesses must set out their refuse at locations set by the director

58-128. Collectors must exercise reasonable care and not willfully injure receptacles

58-129. The city is not responsible for kitchen receptacles placed with regular waste receptacles

58-130. No receptacle shall be placed or remain on any public street or sidewalk on Sunday or any non-collection day or otherwise than as prescribed by the director

58-131. Downtown collection - no garbage etc. on the street except between 6:30-9:00 a.m.; no receptacle left out after 10 a.m.

58-132. No unauthorized person can meddle with a receptacle or its contents

58-133. The city removes dead animals from public property for free and from private property for a fee set by council; no large animals

58-134. All recyclables handled by the city/city's contractor must be placed in a recycling bin and set on the curb for collection

58-152. No hazardous refuse collection by city; responsible person must transport to city disposal facility for proper disposal

58-153. No manufacturing, wholesaling, assembly, or processing refuse collected by the city

58-154a. No building materials or construction, demolition, repair, contractor, or landscape gardener refuse collected by the city

58-154b. Contractors must remove refuse from jobs

58.154c. Tree surgeons must remove refuse from jobs

58-155. Stable manure must be removed by the stable maintenance staff

58-156. No tires will be collected by the city; responsible person must transport to city disposal facility for proper disposal

58-181. Private haulers may use the city disposal facility subject to rules and conditions

58-182. All materials properly delivered to the city disposal facility become property of the City of Durham

58-183. No person shall remove materials from the disposal center unless authorized by the director

58-184. Disposal center hours of operation are set by the director; disposal cannot occur outside of those hours

58-185. The city is not responsible for injuries to people or vehicles, except city staff and vehicles, at the waste disposal facility

58-186. City council may set tipping fees; the city manager may create billing for regular customers

58-187. Tipping fee is double if load has target recyclables.

58-188. City council may set civil penalties for violations.

Zoning Enforcement

BASIC OVERVIEW

The Zoning Enforcement Division of the Durham City-County Planning Department oversees the enforcement of Unified Development Ordinance.

Most Common Enforcement Issues:

1. Vehicles parked off the designated driveway and within street yards in residential districts. All vehicles should be parked in the designated driveway area. This does not apply to townhouses and apartments. (Section 10.2.3 Vehicles Permitted in Residential Districts and Uses)

2. Off premise signs and signs attached to utility poles are prohibited. Example, yard sale signs, lost pet signs, and for rent signs located away from the property. (Section 11.3 Prohibited Signs)

3. No more than three unrelated individuals can occupy a dwelling unit per the definition of family. (Section 16.3 Defined Terms)

Where some or all of the occupants are unrelated by blood, marriage, or adoption, the total number of occupants that are unrelated, shall not exceed three. In applying this provision, children who are under the age of 23 and who are children of the owner or a person renting an entire dwelling unit from the owner shall be counted as a single occupant.

4. Businesses being run from a home shall be permitted only with an approved home occupation permit, which can be applied for in the Planning Department. (Section 5.4.4 Home Occupations)

5. Agricultural uses are not usually permitted. For example, keeping livestock such as goats, chickens, and sheep; however, there are a few instances where the agricultural use is allowed in certain residential areas. (Section 5.1.2 Use Table)

6. Up to two vehicles may be repaired simultaneously on a residential property if the vehicles are registered to an occupant of the residence. (Section 5.4.10 Vehicle Repair)

7. Vehicle sales shall be prohibited within a residential district or on property devoted to residential use, except that the sale of a private vehicle registered to the occupant of the residence shall be allowed. No more than one such vehicle shall be displayed at a time and must meet designated parking guidelines. (Section 5.4.11 Vehicles Sales)

8. Domestic and Recreational vehicles such as boats, camper trailers and utility trailers shall be stored off the street and out of the street and side yard areas. (Section 10.2.3 Vehicles Permitted in Residential Districts and Uses)

9. Fences: There are fence height restrictions, depending on the location of the fence. (Section 9.9 Fences and Walls)

10. Parking of heavy equipment or tractor trailers shall not be allowed except as permitted in section 5.4.4 (Home Occupation). This requirement shall not prohibit commercial vehicles from making deliveries in a residential district. (Section 10.2.3 Vehicles Permitted in Residential Districts and Uses)

Penalties

The Planning Director, or designee, may issue one or more civil penalties for violations of up to \$500.00. If the violator does not pay the civil penalty, the governing entity may collect it in court through civil action in the nature of debt.

Public Works Stormwater Services Division

BASIC OVERVIEW

The Stormwater Services Division of the Public Works Department oversees the enforcement of the City's Pollution Control Ordinance. This is one part of the effort we make to meet our obligations to citizens and the State to improve the water quality of local streams and lakes.

Most Common Enforcement Issues:

1. Automotive fluid spills from leaking vehicles and vehicle maintenance performed in the parking lot. Spills must be cleaned up promptly using —dry clean up|| procedures. Prohibit vehicle maintenance in parking lots. (Article V, Section 70-511) < single spacing needed for 1st paragraph
2. Improperly stored chemicals. Store chemicals in sheltered areas away from storm drains and waterways (such as ditches and creeks). Keep storage lids tightly closed when not in use. Replace or repair storage containers as needed. (Article V, Section 70-517)
3. Vehicle wash water entering the storm drainage system. Disallow vehicle washing in parking lots OR collect and route water to the sanitary sewer system. (Article V, Section 70-511)
4. Sanitary sewer overflows. Educate tenants that grease should not be poured into sinks. Inspect sewer lines regularly.
5. Illegal dumping. No paint, cleaning products, grease, leaves, garbage, dirt, etc. should be dumped or swept into streets or storm drains. (Article V, Section 70-511)
6. The property owner is responsible for maintaining above and below ground drainage systems on the property. (Article V, Section 70-531)
7. If there is a spill on your property that could result in an illicit discharge, you are required to immediately take action to contain the spill. You must also notify the Stormwater Services Division within one working day at 560-SWIM. (Article V, Section 70-511)

Penalties:

Multiple parties may be held responsible for violations. This includes tenants, property managers, and landowners. Violations may result in civil penalties of up to \$500 per day for residential properties and up to \$2,000 per day for non-residential properties. (Article V, Section 70-540)

Stormwater Billing:

Property owners, not tenants, are responsible for paying the stormwater utility bill. (Article VIII, Section 23-204)

Water Management Fats, Oils, and Greases Program (FOG)

BASIC OVERVIEW

The Industrial Pretreatment Program oversees the administration of the FOG Program. When wastewater pipes become blocked by oil and grease, a common result may be sewer overflows. Sewer overflows can have potentially serious environmental health impacts. The easiest way to help prevent overflows is to minimize grease disposal into the collection system from homes and restaurants.

Why is Grease a Problem?

Grease is singled out for special attention because of its poor solubility in water and its tendency to separate from the liquid solution. Large amounts of oil and grease in wastewater can cause problems in collection system pipes. Grease sticks to the insides of sewer pipes, both on your property and in the streets. This decreases pipe capacity and, therefore, requires that piping systems be cleaned more often and/or replaced sooner than otherwise expected. Oil and grease also hamper effective treatment at the wastewater treatment plant. Any type of grease, whether from businesses or residences can cause serious problems that may result in raw sewage backups and overflows in your homes or in the street. Sewer overflows pollute our rivers and streams, increase our risk to coming in contact with disease-causing organisms, and increase the costs of operation and maintenance of sewer lines and wastewater treatment. Residents can help reduce these risks by following these simple DO's and DON'T's:

➤ DO

Collect cooking oil & grease in containers and dispose of it properly (used residential cooking oil can be properly disposed of at the City's Waste Disposal and Recycling Center at no cost)

Remove oil and grease from kitchen utensils, equipment, and food preparation areas with scraper/towels/broom

Keep grease out of wash water

Place food scraps in a waste container for solid wastes

➤ DON'T

Pour oil or grease down the drain.

Wash fryers/griddles, pots/pans, and plates with water until oil and grease are removed

Use hot water to rinse grease off surfaces

Use the drain as a means to dispose of food scraps

Remember: The drain is not a trash can! Educate other tenants that grease should not be poured into sinks. Find out if your landlord inspects sewer lines regularly. If not, contact ??? for help with inspections.

Prevent Fats, Oil, and Grease From Entering Creeks and Streams Through the Storm Drain System

Cover outdoor grease and oil storage containers.

- Uncovered grease and oil storage containers can collect rainwater. Since grease and oil float, the rainwater can cause an overflow unto the ground. Such an overflow will eventually reach the storm water system and nearby streams. The discharge of grease and oil to the storm drain system will degrade the water quality of receiving streams by adding biological and chemical oxygen demand to the stream. Discharge of grease and oil to the storm drain might also result in legal penalties or fines.

Observe storage areas for signs of oil and grease.

Inspect containers for covers.

Remove covers to ensure containers have not overflowed or contain excess water.

Locate grease dumpsters and storage containers away from storm drain catch basins.

Penalties:

Sanitary Sewer Users may be held responsible for violations. Violations may result in civil penalties of up to \$25,000.00 per day per violation.

**This manual is intended as a guide for tenants.
It should not be regarded as legal advice.
If you need legal advice, contact a skilled Landlord and Tenant attorney.**

Appendix: DURHAM CITY CODE OF ORDINANCES

CITY OF Durham “FAIR HOUSING ORDINANCE”

Fair Housing Ordinance No. 1976 – 330 – 5

there's a spacing problem below

The City of Durham —Fair Housing Ordinance|| safeguards all individuals within the city from discrimination in housing opportunities because of **race, color, religion, national origin, or sex**; thereby to protect their interest in personal dignity and freedom from humiliation; to secure the City against domestic strife and unrest which would menace its democratic institutions; to preserve the public health and general welfare; and to further the interests, rights and privileges of individuals within the city.

For more information about the Fair Housing Ordinance, contact Neighborhood Improvement Services at (919) 560-1647

CITY OF DURHAM CODES

For a complete listing of the City of Durham Code of Ordinances, go to:

[http:// www.durhamnc.gov/departments/nis/](http://www.durhamnc.gov/departments/nis/)

Below are some of the codes cited.

Sec. 6-157. Responsibilities of owners.

(a) *Prohibited occupancy.* No owner shall occupy or lease or permit the subletting to another for occupancy any vacant or vacated dwelling, dwelling unit or rooming unit which does not comply with the provisions of this article, nor shall any owner let to another any vacant dwelling, dwelling unit or rooming unit unless it is reasonably clean, sanitary and fit for human occupation.

(b) *Number of occupants.* Every owner or agent of an owner shall advise, in writing, the tenant leasing or subletting property owned by him of the maximum number of occupants permitted in the dwelling, dwelling unit or rooming unit leased or rented.

(c) *Sanitary maintenance.* Every owner of a multi-family dwelling containing four (4) or more dwelling units and every owner of a rooming house, residency hotel or other establishment covered by section 6-155 shall be responsible for maintaining in a clean and sanitary condition the shared or public areas of the dwelling and premises thereof. A clean and sanitary condition shall include, but is not limited to, the following:

(1) The exterior property areas of all premises shall be kept free of objects and materials, including abandoned or immobile motor vehicles, which may create a hazard to the health and safety of the occupants or surrounding community or which is a public nuisance.

(2) All sheds, barns, garages, fences and other appurtenant structures standing on the premises shall be kept in good repair.

(3) All yard spaces and other open areas adjacent to the dwelling shall be sloped, paved or otherwise constructed to properly drain water around or away from the premises.

(4) All required screens shall be furnished and installed in the dwelling and shall be maintained in good condition.

(5) Any high grass and noxious weeds shall be kept mowed or cut to a height of not more than six (6) inches.

(d) *Garbage and rubbish.* For every multi-family dwelling containing four (4) or more dwelling units and any rooming house, residency hotel or other establishment covered by section 6-155, the owner shall provide, in a location accessible to all dwelling occupants, an adequate number of receptacles or a stationary bulk refuse container into which garbage and rubbish from the dwelling unit or rooming unit receptacles may be emptied for storage between the days of collection as required by Chapter 10 of the Durham City Code. Any stationary bulk refuse container provided by the owner shall meet all of the capacity specifications as stated in Chapter 10 of the Durham City Code.

The area surrounding the receptacles provided by the owner or the stationary bulk refuse container shall be maintained in such a way as to prevent the scattering of garbage or refuse on the ground.

(e) *Removal of required services, facilities, etc.* No owner or agent of an owner shall cause any service, facility, equipment or utility, which is required under this article, to be removed or shut off from, or discontinued for, any occupied housing let or occupied by him, except for such temporary interruption as may be necessary while actual repairs or alterations are in process, or during temporary emergencies when discontinuance of service is approved by the administrator.

(f) *Ratproofing and pest extermination.* Every owner of a multi-family dwelling containing two (2) or more dwelling units and every owner of a rooming house, residency hotel or other establishment covered by section 6-155 shall be responsible for the extermination of any insects, rodents, or other pests in all dwelling units or rooming units therein and in the shared public areas of the dwelling and premises thereof. Such extermination shall include, but is not limited to the following:

(1) Preventing the entrance by blocking or stopping up all passages, by which rats may secure entry from the exterior with rat impervious material;

(2) Preventing the interior infestation by rat stoppage, harborage removal, the paving of basements, cellars and any other areas which are in contact with the soil, and such cleanliness as may be necessary to eliminate rat breeding places.

(3) Providing screens or such other devices for basement windows which might provide a point of entry for rodents.

(g) *Cleanliness of sidewalks, alleys, and gutters.* The owner of any premises bordering any street, lane or alley shall not allow garbage or rubbish to be deposited into the street, gutters, or alleys abutting the premises.

The owner or operator of any dwelling containing more than one dwelling unit and the owner of any rooming house, residency hotel or other establishment covered by section 6-155 shall maintain in a clean and sanitary condition, free of garbage, rubbish, bulk trash, or other offensive material, both that portion of the sidewalk and the gutter that abuts the property and that portion of any alley that abuts the property and is bound by the property lines of the adjoining properties and the mid-point of such alley. (Ord. No. 10064, § 2, 2-7-94)

