

Brokerage Name: ResiHome LLC

License #: C27861

Address: 3630 Peachtree Rd NE,
Suite 1500, Atlanta, GA 30326

Phone: (866) 500-7064

as a *buyer's agent* without a written agreement. But if you decide to make an offer to purchase a particular property, the agent must obtain a written agency agreement before writing the offer. If you do not sign it, the agent can no longer represent and assist you and is no longer required to keep information about you confidential.

Be sure to read and understand any agency agreement before you sign it. Once you sign it, the agent must give you a copy of it.

Services and Compensation: Whether you have a written or unwritten agreement, a *buyer's agent* will perform a number of services for you. These may include helping you • find a suitable property • arrange financing • learn more about the property and • otherwise promote your best interests. If you have a **written** agency agreement, the agent can also help you prepare and submit a written offer to the seller.

A *buyer's agent* can be compensated in different ways. For example, you can pay the agent out of your own pocket. Or the agent may seek compensation from the seller or listing agent first, but require you to pay if the listing agent refuses. Whatever the case, be sure your compensation arrangement with your *buyer's agent* is spelled out in a buyer agency agreement before you make an offer to purchase property and that you carefully read and understand the compensation provision.

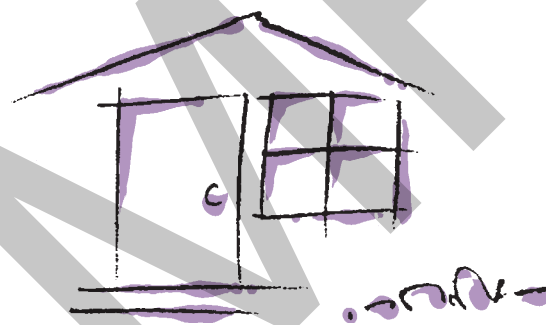
Dual Agent

You may permit an agent or firm to represent you **and** the seller at the same time. This “dual agency relationship” is most likely to happen if you become interested in a property listed with your *buyer's agent* or the agent's firm. If this occurs and you have not already agreed to a dual agency relationship in your (written or oral) buyer agency agreement, your *buyer's agent* will ask you to amend the buyer agency agreement or sign a separate agreement or document permitting him or her to act as agent for both you and the seller. It may be difficult for a *dual agent* to advance the interests of both the buyer and seller. Nevertheless, a *dual agent* must treat buyers and sellers fairly and equally.

Although the *dual agent* owes them the same duties, buyers and sellers can prohibit *dual agents* from divulging **certain** confidential information about them to the other party.

Some firms also offer a form of dual agency called “designated dual agency” where one agent in the firm represents the seller and another agent represents the buyer. This option (when available) may allow each “designated agent” to more fully represent each party.

If you choose the “dual agency” option, remember that since a *dual agent's* loyalty is divided between parties with competing interests, it is especially important that you have a clear understanding of • what your relationship is with the *dual agent* and • what the agent will be doing for you in the transaction. This can best be accomplished by putting the agreement in writing at the earliest possible time.



Seller's Agent Working With a Buyer

If the real estate agent or firm that you contact does not offer *buyer agency* or you do not want them to act as your *buyer agent*, you can still work with the firm and its agents. However, they will be acting as the *seller's agent* (or “subagent”). The agent can still help you find and purchase property and provide many of the same services as a *buyer's agent*. The agent must be fair with you and provide you with any “material facts” (such as a leaky roof) about properties.

But remember, the agent represents the seller—not you—and therefore must try to obtain for the seller the best possible price and terms for the seller's property.

Furthermore, a *seller's agent* is required to give the seller any information about you (even personal, financial or confidential information) that would help the seller in the sale of his or her property. Agents must tell you *in writing* if they are *sellers' agents* before you say anything that can help the seller. But **until you are sure that an agent is not a seller's agent, you should avoid saying anything you do not want a seller to know.**

Sellers' agents are compensated by the sellers.

Disclosure of Seller Subagency (Complete, if applicable)

When showing you property and assisting you in the purchase of a property, the above agent and firm will represent the **SELLER**. For more information, see “Seller's Agent Working with a Buyer” in the brochure. Agent's Initials Acknowledging Disclosure: _____

(Note: This brochure is for informational purposes only and does not constitute a contract for service.)

The North Carolina Real Estate Commission
P.O. Box 17100 • Raleigh, North Carolina 27619-7100
919/875-3700 • Web Site: www.ncrec.gov
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WORKING
WITH
REAL
ESTATE
AGENTS

WORKING WITH REAL ESTATE AGENTS

When buying or selling real estate, you may

find it helpful to have a real estate agent assist you.

Real estate agents can provide many useful services and

work with you in different ways. In some real estate

transactions, the agents work for the seller. In others,

the seller and buyer may each have agents. And some-

times the same agents work for both the buyer and the

seller. It is important for you to know whether an agent

is representing you as **your** agent or simply assisting

you while acting as an agent of the other party.

This brochure addresses the various types of

agency relationships that may be available to you.

It should help you decide which relationship you want

to have with a real estate agent. It will also give you

useful information about the various services real estate

agents can provide buyers and sellers, and it will help

explain how real estate agents are paid.



SELLERS

Seller's Agent

If you are selling real estate, you may want to “list” your property for sale with a real estate firm. If so, you will sign a “listing agreement” authorizing the firm and its agents to represent you in your dealings with buyers as your *seller's agent*. You may also be asked to allow agents from other firms to help find a buyer for your property.

Be sure to read and understand the listing agreement before you sign it. Your agent must give you a copy of the listing agreement after you sign it.

Duties to Seller: The listing firm and its agents must • promote your best interests • be loyal to you • follow your lawful instructions • provide you with all material facts that could influence your decisions • use reasonable skill, care and diligence, and • account for all monies they handle for you. Once you have signed the listing agreement, the firm and its agents may not give any confidential information about you to prospective buyers or their agents without your permission so long as they represent you. **But until you sign the listing agreement, you should avoid telling the listing agent anything you would not want a buyer to know.**

Services and Compensation: To help you sell your property, the listing firm and its agents will offer to perform a number of services for you. These may include • helping you price your property • advertising and marketing your property • giving you all required property disclosure forms for you to complete • negotiating for you the best possible price and terms • reviewing all written offers with you and • otherwise promoting your interests.

For representing you and helping you sell your property, you will pay the listing firm a sales commission or fee. The listing agreement must state the amount or method for determining the sales commission or fee and whether you will allow the firm to share its commission with agents representing the buyer.

Dual Agent

You may even permit the listing firm and its agents to represent you **and** a buyer at the same time. This “dual agency relationship” is most likely to happen if an agent with your listing firm is working as a *buyer's agent* with someone who wants to purchase your property. If this occurs and you have not already agreed to a dual agency relationship in your listing agreement, your listing agent will ask you to amend your listing agreement to permit the agent to act as agent for both you and the buyer.

It may be difficult for a *dual agent* to advance the interests of both the buyer and seller. Nevertheless, a *dual agent* must treat buyers and sellers fairly and equally. Although the *dual agent* owes them the same duties, buyers and sellers can prohibit *dual agents* from divulging **certain** confidential information about them to the other party.

Some firms also offer a form of dual agency called “designated agency” where one agent in the firm represents the seller and another agent represents the buyer. This option (when available) may allow each “designated agent” to more fully represent each party.

If you choose the “dual agency” option, remember that since a dual agent's loyalty is divided between parties with competing interests, it is especially important that you have a clear understanding of • what your relationship is with the *dual agent* and • what the agent will be doing for you in the transaction.

BUYERS

When buying real estate, you may have several choices as to how you want a real estate firm and its agents to work with you. For example, you may want them to

represent only you (as a **buyer's agent**). You may be willing for them to represent both you and the seller at the same time (as a **dual agent**). Or you may agree to let them represent only the seller (**seller's agent** or **subagent**). Some agents will offer you a choice of these services. Others may not.

Buyer's Agent

Duties to Buyer: If the real estate firm and its agents represent you, they must • promote your best interests • be loyal to you • follow your lawful instructions • provide you with all material facts that could influence your decisions • use reasonable skill, care and diligence, and • account for all monies they handle for you. Once you have agreed (either orally or in writing) for the firm and its agents to be your *buyer's agent*, they may not give any confidential information about you to sellers or their agents without your permission so long as they represent you. **But until you make this agreement with your buyer's agent, you should avoid telling the agent anything you would not want a seller to know.**

Unwritten Agreements: To make sure that you and the real estate firm have a clear understanding of what your relationship will be and what the firm will do for you, you may want to have a written agreement. However, some firms may be willing to represent and assist you for a time

Continued on the back

FOR BUYER/SELLER

Agent Name

License Number

Firm Name

Date

WORKING WITH REAL ESTATE AGENTS

Agents are required to review this with you and must retain this acknowledgment for their files.

This is not a contract

By signing, I acknowledge that the agent named below furnished a copy of this brochure and reviewed it with me.

Buyer or Seller Name (Print or Type)

Buyer or Seller Signature

Buyer or Seller Name (Print or Type)

Buyer or Seller Signature

Date

Firm Name

Agent Name

License Number

Disclosure of Seller Subagency

(Complete, if applicable)

When showing you property and assisting you in the purchase of a property, the above agent and firm will represent the SELLER. For more information, see “Seller's Agent Working with a Buyer” in the brochure.

Buyer's Initials Acknowledging Disclosure: _____

termination is only excused due to certain military transfers, foreclosures of the property or, in certain instances where the tenant is a victim of domestic violence, sexual assault, or stalking. So, if you leave early and the landlord is unable to re-rent your apartment, the landlord may sue you for the unpaid rent and costs, and/or file a negative credit report against you.

Some leases allow a tenant to terminate the lease early under certain circumstances by giving notice. Check your lease to determine if it permits early termination and the amount of notice it requires. If, for example, your lease allows you to give a 30-day notice to terminate it, typically, you must notify the landlord in writing at least 30 days before the end of the month in which you propose to leave and pay rent through the end of that month.

Q: I'm renting on a month-to-month basis. What notice must I give to terminate my lease?

A: Renting month-to-month is a form of "periodic tenancy." A periodic tenancy often occurs when a tenant remains in the apartment after the expiration of the initial lease term. Periodic tenancies have no termination date and may be terminated by either the landlord or tenant giving notice to the other. The amount of notice required will usually be set forth in the lease. If there is no written lease, or if the lease does not contain a notice provision, then North Carolina law allows you to terminate a year-to-year tenancy by giving notice to the landlord at least one month before the end of the year; a month-to-month tenancy by giving notice at least seven days before the end of the month; and a week-to-week tenancy by giving notice at least two days before the end of the week.

Q: My one-year lease has expired, but I still live in the property and pay rent on a monthly basis. Now the landlord says he is increasing my rent. Must I pay the increase?

A: It depends upon the terms of the lease. Most leases provide that when the lease expires, you automatically become a month-to-month tenant and are no longer guaranteed a particular rental rate. In that case, the landlord can increase the rent by any amount by giving you the same notice of his intent to raise the rent that he would be required to give to terminate your tenancy. You may either stay and pay the higher rent or move out.

However, some leases automatically expire at the end of the lease term and have no renewal provision. In that case, the landlord may demand a rent increase in order for you to remain in possession after the expiration of the lease. But if the landlord accepts your rent payment in the usual amount for the month following the expiration of your lease, he may have effectively renewed your lease for another year at the old rate.

Q: My landlord just sold the property I am renting to someone else. Can the new owner evict me?

A: Probably not. If you are a tenant in possession of the property, the law presumes that the purchaser is aware of your tenancy, and requires that purchaser to honor your lease until it expires. However, you could be evicted if you agreed in your lease that you would vacate the premises upon the sale of the property. The new owner will not have to renew your lease when it expires.

Q: The home I am currently renting is going to be sold at foreclosure. What are my rights and responsibilities?

A: Tenants residing in a property containing less than 15 rental units, which is being sold in a foreclosure proceeding, may terminate the lease and move out without penalty or breach of the lease. However, the

tenant must set the termination date at least 10 days or more after the date of the formal notice of sale from the Superior Court.

Not all individuals who are renting a home want to move out immediately after the foreclosure sale. Since 2009, a federal law allows some leases to survive a foreclosure. In these cases, a tenant has the option to stay until the end of the lease. However, in cases where the tenant is renting month-to-month or the buyer of the foreclosed property intends to live in the property instead of buying it as an investment or rental property, the law allows the buyer to terminate the remaining lease term, but only after giving the tenant a 90-day notice to vacate the home.



Q: My roommates and I paid a tenant security deposit before we rented our house. Will I get a refund of this deposit for my fair share if I vacate the property before my roommates?

A: No, typically a landlord will not refund a portion of the tenant security deposit to a roommate who is moving out if other tenants on the lease remain in the residence. In most cases, the tenant security deposit will be held in trust by the landlord until the last tenant leaves. At that time, the deposit will be refunded, less any lawful deductions, to any remaining tenants leaving the home. If you vacate the residence before the end of your lease, or before your roommates, you should discuss any refund with your roommates directly.

Q: Am I responsible for paying my roommate's share of the rent if my name is on the lease?

A: Yes. If your name is on the lease, you are legally responsible for the performance of the lease—even if your roommate's name is also on it. Many written leases require each tenant to be responsible for all rent that is due, and landlords will usually take legal action against the remaining tenant if his roommate(s) move out and the full rent is not paid.

Q: What must a landlord do to evict me?

A: A landlord or his agent may evict you for violating a provision of your lease, but must do so according to lawful procedures. For example, unless your lease provides otherwise, when you do not pay your full rent, the landlord must first make a clear demand on you for payment of the past-due rent. Then, if you do not pay the rent within ten days (or if you have violated your lease in some other way), the landlord may file a formal "summary ejection" complaint against you in court describing why you should be ejected. The landlord may recover unpaid rent, court fees and other damages from you.

Many leases permit the landlord to shorten the ten day notice period or avoid it altogether by including a "forfeiture" clause. Such clauses provide that the lease terminates if you do not pay your rent within a specified number of days after it is due and may require no notice or less than ten days' notice before the landlord is permitted to begin the summary ejection proceeding in court.

At the court hearing, you can, of course, raise defenses. If the magistrate rules in favor of the landlord, you can appeal the decision within ten days. However, you must pay the appropriate rent to the clerk of court while the appeal is pending. If you do not appeal in time, or if the landlord wins the appeal, he can enlist the services of the county sheriff to execute the judgment and

evict you. At all times throughout the process, the landlord must use peaceable means to regain his property. "Self-help eviction," such as changing the locks, removing your possessions, or padlocking your door, is not permitted.

Q: Can I pay rent to the landlord to stop an eviction proceeding?

A: Maybe. It depends on the terms of your lease. If your lease does not address the issue and you pay or offer to pay the rent due (and any costs the landlord has incurred), the eviction proceeding is automatically terminated. If the landlord continues the suit, he will be responsible for your future legal fees. But if your lease allows the landlord to terminate your tenancy if you don't pay your rent on time, he can accept your late rent and still seek to evict you. Most leases today give the landlord this right.

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Questions and Answers on: RENTING RESIDENTIAL REAL ESTATE



Questions and Answers on: RENTING RESIDENTIAL REAL ESTATE

The relationship between you (the tenant) and a landlord begins when you enter into a contract—typically a lease. The terms of a lease generally are not dictated by law. However, many of the duties that you owe to each other are controlled by statutory law and cannot be “bargained away.”

This pamphlet focuses on questions that frequently arise during the landlord-tenant relationship. Although the term “apartment” is used throughout, you should be aware that the questions and answers apply equally to other types of residential rental properties.

For information on tenant security deposits, unlawful discrimination in rental housing, condominiums and townhouses, and other consumer housing issues, contact the North Carolina Real Estate Commission (919/875-3700) and request a free copy of a “Questions and Answers” brochure on any of these topics or visit the Commission’s Web site (www.ncrec.gov) for a pdf version. Other written materials are available from the Consumer Protection Section of the Attorney General’s Office (919/716-6000). And for fair housing (discrimination) issues, call the North Carolina Human Relations Commission (919/807-4420) or your local fair housing agency. In addition, you may wish to review Chapter 42 of the N.C. General Statutes and consult a private attorney.

Q: In North Carolina, must a lease agreement be in writing?

A: No. An oral agreement can establish a landlord-tenant relationship if it is for a term of less than three years from the time the agreement is made and includes the • names of the landlord and tenant(s), • location of the property to be leased, • time period of the lease, and • amount of rent to be paid. *[Note: If the lease is required to be in writing, the signature of the party against whom you seek to enforce the lease is required.]*



Q: I filled out an application to rent an apartment and gave the landlord money to “hold” the apartment for me. Now I have found another place that I like better. Can I get my money back?

A: Probably not. Money you give to “hold” an apartment generally can be kept by the landlord. It is the price you pay to ensure that the landlord does not rent the apartment to someone else. Furthermore, if you have already agreed to rent a particular apartment for a particular term at a particular price, you may have created an oral lease; if so, the money may be considered a security deposit which can be retained by the landlord to the extent necessary to compensate him for your failure to pay rent. And, you may have to pay rent until the lease expires or until the landlord re-rents the property, whichever occurs first.

Q: My landlord gave me a written lease but it does not include his earlier oral promise to replace worn carpet. Can I rely on his oral promise?

A: No. Do not rely on a prior oral agreement with the landlord. To make it “legal,” have it written into the lease and initialed by both of you.

Q: Does the landlord have to repaint the apartment or steam clean the carpets before I move in?

A: No. The landlord has no obligation to paint an apartment or steam clean the carpets each time it is rented.

Q: May a landlord refuse to rent to someone who smokes, has a criminal conviction or who is under a certain age?

A: Yes. A landlord may lawfully refuse to rent to anyone for any reason other than those specified in the Fair Housing Act. However, the landlord should apply his or her selection criteria consistently with all prospective tenants.

Q: Can the landlord charge me more because I have a pet?

A: Yes. The landlord may charge extra rent and/or a nonrefundable pet fee in exchange for allowing you to keep a pet in the apartment. Furthermore, the landlord may charge more for some types or sizes of pets than for others; or, may prohibit pets completely. Any agreement you have with the landlord about pets should be included in the written lease.

Q: If my personal property is damaged by fire or theft while I am a tenant, will the landlord have to compensate me for my loss?

A: Not necessarily. Many tenants assume that their belongings are protected under the landlord’s insurance. But unless the fire or theft was the result of a negligent act by the landlord, he is not responsible for your loss. Therefore, it is generally a good idea for you to purchase renter’s insurance for your protection.

Q: Can my landlord come into my apartment periodically just to check its condition?

A: Maybe. Many leases give the landlord the right to enter the property to inspect it to see if the tenant is complying with his obligations, to make necessary repairs, to place “for sale” or “for rent” signs on it, or to show it to prospective purchasers or tenants. Still, entry must be at reasonable times and upon reasonable notice. If your lease doesn’t address it, the landlord has no right to enter your apartment during the term of your lease.

Q: Does the landlord have to repair anything in my apartment that breaks down? What if I signed a lease accepting the apartment “as is”?

A: The landlord is responsible for some repairs, and the tenant for others. For example,

The landlord must

- Comply with local housing and building codes;
- Do whatever is necessary to put and keep your apartment in fit and habitable condition;
- Maintain in good, safe working order all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances which he has provided, and promptly repair them when you notify him in writing they are in need of repair (except in cases of emergencies);
- Keep all common areas in safe condition; and
- Provide and install smoke detectors and carbon monoxide detectors and replace batteries at the beginning of your tenancy.

[Note: After the tenancy begins, the landlord may enter a written agreement with you to pay you or reduce your rent in exchange for repairs.]

The tenant must

- Keep the rental unit clean (including toilet, sinks, and baths) and as safe as conditions permit;

- Dispose of trash and garbage in a clean and safe manner;
- Pay the rent as promised and otherwise comply with the lease;
- Not damage (or knowingly let anyone else damage) or remove any part of the property;
- Comply with any duties imposed by local building and housing codes;
- Replace batteries in smoke detectors and carbon monoxide detectors as needed and tell the landlord if a detector needs to be repaired; and
- Leave the unit clean at the end of the lease and in as good condition as when you moved in, except for reasonable wear and tear. *[Note: It is important at the beginning of your lease to note the condition of your apartment on a checklist and ask the landlord to initial it. That way, you will not be held responsible for damage that existed when you moved in.]*

Q: Can I withhold my rent if the landlord does not do the repairs?

A: No, not without a court order or the permission of the landlord. Give the landlord a written request for repairs, and keep a copy. If a reasonable time passes and the repairs are not properly done, you may seek a rent reduction in Small Claims Court for the decreased value of your apartment. If the landlord ignores your request to fix the problem and your apartment is uninhabitable, you may be able to vacate the apartment and terminate the lease under a legal theory called “constructive eviction.” Consult a private attorney for advice.

Q: Can the landlord charge a late fee?

A: Yes. If the landlord receives your rent five days or more after it is due, then he may charge a late fee. The maximum late fee is \$15.00 or 5% of the rent, whichever is higher.



Q: Can the landlord evict me for complaining?

A: No. Under North Carolina law, you can do the following things without fear of eviction:

- Complain to the landlord;
- Complain to government agencies (such as housing inspectors and health departments);
- Assert your rights under the lease;
- Organize with other tenants to assert your rights; and
- Sue the landlord to enforce the lease.

However, a landlord may choose not to renew the lease at the end of the current term.

Q: Can the landlord raise my rent during the term of my lease?

A: No. Unless the lease states otherwise, you are guaranteed the agreed-upon monthly rent for the agreed-upon term of the lease. However, you also give the landlord your guarantee to pay the agreed-upon rent, on time, for that period.

Q: Can’t I always terminate my lease with a 30-day notice to the landlord?

A: No. If your lease provides for a definite termination date, you are typically obligated for the entire lease term, even if you have a good reason for leaving such as illness or a job transfer. Early

Continued

extraordinary measures are necessary to clean or restore the premises, the landlord may deduct the cost of such cleaning from your security deposit.



Q: What will happen to my security deposit if I vacate the property before the end of my lease?

A: In addition to any physical damage which you may have caused to his property, the landlord may also deduct from your security deposit any actual damages caused by your moving out of the property before the end of your lease term; however, they may not charge you a “termination fee” or impose any other penalty or forfeiture of deposit for your early termination and must use their best efforts to fill the vacancy as soon as possible. For example, your rent is \$600 per month and you move out of the landlord’s property two months before the end of your lease. If it takes the landlord one month to re-rent the property, \$600 may be deducted from your security deposit as lost rent for the period during which the property was vacant. The landlord may also use the security deposit to recover any reasonable fees or commissions charged by a licensed broker to re-rent the property.

Q: What will happen to my security deposit if, for some reason, I am unable to pay my rent?

A: If you fail to fulfill your obligations under

the lease, including your obligation to pay rent, the landlord or agent may evict you from the property. The court proceeding is known as “summary ejection.” In addition to having you removed from the property, the landlord or agent may recover from you any unpaid rent, late fees, and, of course, the cost of repairing any physical damage which you may have caused to the property—but not damage due to ordinary wear and tear. In addition, if you leave behind any of your personal property (furniture, clothing, etc.), the landlord may also recover from you the cost of storing your property. If your security deposit will not cover the landlord’s damages for unpaid rent, physical damage to the property, and storage of your personal property, you will be liable for payment of any remaining costs. If a civil judgment is entered against you by the court, it could adversely affect your credit rating.



Q: Is there a deadline by which the landlord or agent must return my security deposit?

A: Within 30 days after the termination of your tenancy, the landlord or agent must send you either a full refund of your deposit or a written itemized accounting of any deductions along with any remaining refund amount. Where the full



amount of damage cannot be determined within 30 days, the landlord or agent must send you a written interim accounting of deductions claimed, followed by a final accounting no later than 60 days following the end of the tenancy. So, it is important to give your landlord or agent a full forwarding address. If you cannot be located, the landlord or agent must hold any refund due for at least six months in their trust account. If the landlord or agent fails to refund your deposit or make the required accounting, you can sue for recovery of the deposit and reasonable attorney fees. The failure to make the accounting as required under the Act is a forfeiture of the landlord’s right to retain any portion of the deposit.

Q: What will happen to my security deposit if the ownership or management of the property that I rent is transferred to someone else?

A: If the landlord who collected your security deposit transfers ownership of the property to someone else during the term of your lease, they must either refund your security deposit to you, or transfer your deposit to the new owner (after making any allowable deductions) and notify you in writing of the new owner’s name and address. In either case, your deposit must be refunded or notice given to you of the new

owner’s name and address *within thirty days of the transfer*. Likewise, if you have paid your security deposit to the landlord’s agent and the agent discontinues managing the property during the term of your lease, the agent must either transfer your deposit to the landlord/owner or, with the owner’s permission, transfer your deposit to the new manager. In either case, the agent to whom you paid your security deposit must notify you of the new location of your deposit and, if your deposit is being transferred to the owner, advise the landlord of their responsibilities to you under the Tenant Security Deposit Act (NC Gen. Stat. § 42-50 et seq.).

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Questions and Answers on: TENANT SECURITY DEPOSITS



A publication of the North Carolina Real Estate Commission

Questions and Answers on: TENANT SECURITY DEPOSITS

Each year, hundreds of thousands of North Carolinians rent houses, apartments, mobile homes, and other dwellings as their residences. For the first-time tenant—and some veteran renters—this can be a confusing and somewhat unsettling experience. The more you know about the process of renting residential real estate, the better you will be able to protect your interests and carry out your responsibilities under your rental agreement.

This booklet addresses an important aspect of the rental process which generates many questions from tenants—tenant security deposits.

How much security deposit can I be charged? Can my landlord charge me a “pet fee”? What happens to my security deposit while I’m a tenant? And what happens to it once my rental term is over? These are some of the questions that this booklet attempts to answer. Although this information focuses on security deposits from your perspective as a tenant, it should also be useful to landlords, property managers and rental agents.



The North Carolina Tenant Security Deposit Act (the “Act”) sets out the rights and responsibilities of residential tenants, landlords, and their agents regarding tenant security deposits. (See NC General Statutes Sections 42-50 through 42-56.)

The Act applies to all residential properties except single rooms. The Act does not require landlords, or their agents, to collect security deposits, but they usually do in order to assure that they will be reimbursed if certain specified losses are caused by tenants. Landlords also frequently use the services of real estate agents to help them manage and rent their properties. These agents must be licensed by the North Carolina Real Estate Commission and, like the landlord, must comply with the Tenant Security Deposit Act as well as the N.C. Real Estate License Law and various rules adopted by the Real Estate Commission when renting the owners’ properties.

Read this booklet carefully! Then, if you still have questions about tenant security deposits, you are encouraged to contact your private attorney. You may call the N.C. Real Estate Commission’s Regulatory Affairs Division (919/875-3700) if a real estate broker or firm is managing the rental property or the N.C. Department of Justice (919/716-6000) if you are renting directly from an unlicensed landlord.

Q & A

Q: How much security deposit can a landlord charge?

A: If your agreement with the landlord is to rent his property on a week-to-week basis, your deposit may not exceed the equivalent of two weeks’ rent. If you’re renting on a month-to-month basis, your deposit cannot be more than 1 1/2 months’ rent. And, if your rental period is greater than month-to-month, your deposit cannot be more than two months’ rent.

Q: Can my landlord charge me a “pet fee”?

A: Yes. In addition to the security deposit, your landlord may also charge you a non-refundable fee if you plan to keep a pet in the property or on the grounds. The “pet fee” can be any “reasonable” amount that the landlord wishes to charge. If your pet damages the property, the landlord may also keep all or a portion of the security deposit as necessary to repair the damage in addition to keeping the pet fee.

Q: What happens to my security deposit while I’m a tenant?

A: To ensure that your security deposit is safe during the period of your tenancy, State law requires the landlord or property manager to keep it in a “trust account.” A trust account is simply a bank account designated as “trust” or “escrow” that does not contain any of the landlord’s or broker’s personal funds. The trust account must be maintained in a licensed and insured bank or savings and loan institution licensed in North Carolina. Within 30 days following the beginning of your lease term, the landlord or agent must

notify you in writing where your security deposit has been placed (typically, this notification is given in the lease). If your security deposit is moved to a different bank or savings and loan during your tenancy, you must be notified in writing of the new location.



Q: Are there any exceptions to the requirement that my security deposit be placed in a trust account?

A: Yes, there is one exception. If the owner is managing their own property, or the property is being managed by an agent who has agreed for the owner to hold the deposits, the owner may post a bond to cover the security deposits. In such case, the landlord must: (1) notify you and the other tenants of the name of the insurance company providing the bond; (2) purchase the bond from an insurance company licensed to do business in North Carolina; (3) name you and the other tenants as payees under the bond; and (4) assure that the amount of the bond is sufficient to cover all security deposits collected. However, this is uncommon and most landlords require a security deposit.

Q: Can my security deposit be placed in an interest-bearing account?

A: Yes, under certain conditions. If a real estate agent is managing property for the owner,

they may place your deposit in an interest-bearing account *only if they have your written permission and the written permission of the owner*. If your lease authorizes the agent to place your security deposit in an interest-bearing account, the authorization in the lease must be stated in a clear and conspicuous manner. The interest may be paid to you, to the landlord, or to the agent, and depends upon your agreement with the landlord.

Q: What will happen to my security deposit at the end of my lease term?

A: If you stay for the entire lease term and you have paid all rent due, the landlord (or agent) may deduct from your security deposit only the actual cost of repairing any damage which you have done to the property. *You cannot be charged for damage caused by “ordinary wear and tear.”* What constitutes “ordinary wear and tear” must be determined on a case-by-case basis. For example, if you are the most recent tenant in the property, the landlord cannot charge you to replace such items as carpet, plumbing, or appliances which need replacement because they are old and worn out. In fact, you cannot be charged for even contributing to the normal wear and tear of such items. On the other hand, if you caused the item to wear out because of your mistreatment of it, you may be charged for the amount of *unusual* wear which you caused (but not the entire cost of replacement). Ordinarily, costs for routine cleaning and maintenance (painting, carpet cleaning, etc.) may not be deducted from your security deposit. However, if you leave the property so filthy that unusual or

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