



HOUSING & NEIGHBORHOOD DEPARTMENT

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Tenants' Rights and Obligations

Handbook



A publication of the City of Raleigh Fair Housing Hearing Board.

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Overview

TENANTS' RIGHTS AND OBLIGATIONS: A HANDBOOK

This Handbook provides a general overview of your rights and obligations as a renter, also called a “tenant.” It is not a substitute for legal advice, because each person’s specific situation is unique. It will, however, set out the basic legal rights and obligations you have as a tenant. There are state laws and city ordinances that affect what you and your landlord can and cannot do. On some topics, however, where the law is not clear or no law directly applies, both landlord and tenant need to act in a fair and reasonable manner. Finally, a list of agencies that might be helpful to you is provided at the end of this Handbook.

Renting a home is a business transaction, and like any business transaction, it is important to fully understand what obligations you are agreeing to. Before you sign any document, make sure you read and understand it. Sometimes that means you have to ask questions and, if your questions are not answered, go elsewhere.

Always demand a copy of any document you sign. If you write a note, make sure to keep a copy of it for your records. Finally, to help you remember things in the future, make notes now or take photographs. If you need to refer to them in the future, they will explain or show what happened earlier, which may be useful.



Getting Ready To Rent A Unit



Inspecting Before You Rent. Before you agree to rent a unit, inspect it first during daytime hours. Check the appliances, doors and windows, walls, ceiling, rugs, floor, and furniture (if the apartment is furnished). Notice if there is a musty or moldy smell inside. Ask about repairs you think are needed and get a clear commitment (in writing) that the owner will fix them before you move in. Don't pay the owner any money and don't sign any agreements until the unit is fully repaired.

The City Housing Code. The City of Raleigh has a code of minimum housing conditions. It states the requirements that any rental dwelling must follow in order to be a fit place to live. This Code is enforced by the City's Code Enforcement Division of the Housing and Neighborhoods Department, which can be contacted by telephone at 919-996-2444. If you have any doubts about the condition of a dwelling, you can call this office to see if the unit was supposed to be repaired before it was shown to you. If it was supposed to be repaired but wasn't, you may not legally rent it.

Consider the cost. You will have to decide if you can afford the rent that is being charged. North Carolina allows owners to charge as much rent as they wish for a unit. If you cannot really afford the unit, even if it suits you in other ways, it is best to find another place to rent. Also, if you can afford the unit, find out how much it will cost to heat and cool the unit. Even if you can afford the rent, if the utility payments will be too high, you need to look elsewhere.

Discrimination based on your race, color, religion, sex, national origin, handicap (physical or mental), and familial status is illegal. If anyone refuses to rent to you based upon any of these reasons, they have broken state and federal law. You may pursue a complaint against them by contacting the North Carolina Human Relations Commission or the Fair Housing Project of Legal Aid of North Carolina (listed in Directory at the end). You may be entitled to money damages for an act of intentional discrimination against you.



Signing The Lease

What is a lease? A lease is a written agreement between a property owner, or his or her agent, (the “landlord”) and the renter (the “tenant”) setting out what each person must do. It is a binding agreement. If there is ever any dispute between the tenant and the landlord, whatever the lease says will control, so long as the section of the lease is legal. It is very important that you read and understand the terms of a lease before you sign it. Once you sign it, you will be held responsible for following it.

Important terms of the lease. The amount of the rent, the period of time the lease requires you to live at the unit, and who is allowed to live at the unit with you are all important terms of the lease. So is what you are prohibited from doing while you live there, such as disturbing your neighbors or keeping a broken down car. The landlord can include terms in a lease so long as they do not conflict with North Carolina or federal law, or City ordinances.

While you are responsible for certain things under a lease, your landlord will also have responsibilities under it and under the law. For example, even if the lease does not say it, your landlord is responsible for making most repairs to the unit. And while your landlord can charge you late fees, there are limits on how much you can be charged.

What if there is no written lease? You can rent a unit without having a written lease. If you do so, the laws about what landlords and tenants must do still apply.

Signing the lease. Generally speaking, only those persons who actually sign the lease can be held legally responsible for complying with it. Also, only those who sign the lease have the right to all of the lease’s benefits, including control of who lives in the unit. A landlord can put a limit within a lease that only those people listed on the lease are permitted to live at the property, this includes all people including family members.

What happens when the term of the lease is up? The “term” is the amount of time you and your landlord agreed you could live at the unit. When that period is up, unless the lease provides otherwise, you will need to make a new agreement with the landlord in order to keep living there. Read your lease carefully, because some leases require that you give notice to your landlord—often 30 days’ notice—in advance of when you plan to move. If you move out early (before the lease allows), in most cases your landlord can hold you responsible for the rent they expected to receive from you during the lease period, until they can re-rent the unit.

What if the lease provides that it is renewed automatically? Some leases state that, once their term is up, the lease will automatically continue in effect for a new term. Under such a lease, you must follow the stated requirements of advance notice in order to be able to end the lease.

Paying A Deposit

Security Deposit. Most landlords require that renters pay an amount up front as a deposit against any future losses, such as from damage to the unit or unpaid rent. The amount the landlord can charge for such a deposit is limited by law. The landlord must hold the deposit until the tenant moves out, and neither the tenant nor landlord may use it for any purpose until then. The deposit may be used to cover reasonable costs to the landlord related to the tenancy, including damages that go beyond normal wear and tear, unpaid rent, and the costs of removing items you have left behind.

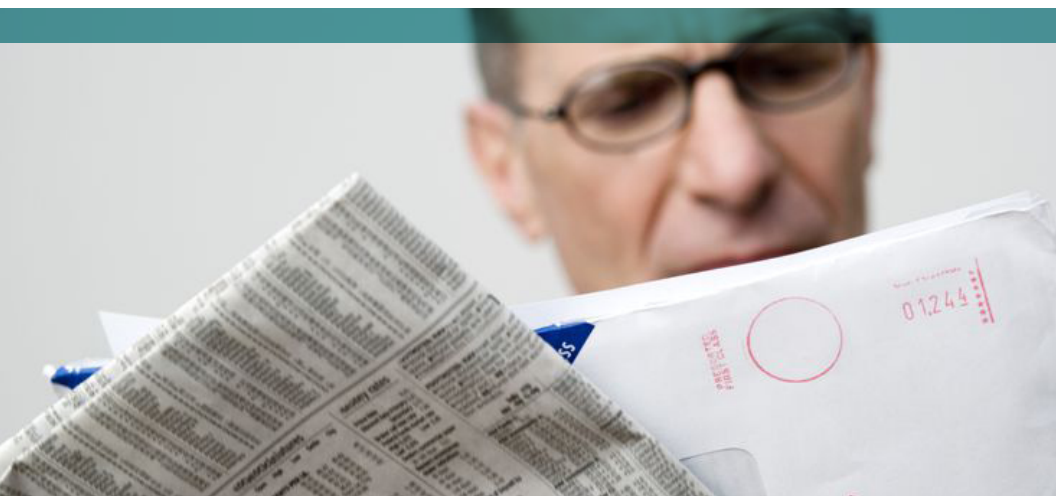
Within 30 days after the tenant has vacated the leased premises, the landlord must tell the tenant in writing what costs the deposit has been used for, and must refund any amount of the deposit that the landlord is not entitled to keep. If the landlord cannot determine the total costs within 30 days, the landlord must provide the tenant with an interim list of the expected costs no later than 30 days after the tenant has moved. The landlord must then provide a final list of costs within 60 days after the tenant has moved. If the tenant’s address is unknown to the landlord, then he or she may apply the charges to the deposit after the 30 days have passed and then must hold the balance (if there is one), for the tenant for a period of 6 months.

For the deposit, the time period for when the landlord must act starts when the tenant vacates the leased premises or moves out. As the tenant, you need to notify the landlord of your new mailing address so that the written accounting of the deposit or the return of it can be sent to the proper address. It is better practice to notify the landlord of this address in writing and to keep a copy of the notice.

What can I do if a landlord fails to follow these requirements or keeps my deposit illegally? A landlord may not keep any portion of the security deposit if the landlord willfully fails to follow the requirements imposed by law. If you feel that a landlord has acted illegally, you may sue the landlord in Wake County Small Claims court to recover your deposit. See the instructions in the following section, “Maintaining Decent Conditions At The Unit” for how to do so.

Late Fees

Late Fees up to certain amounts are allowed. Your landlord may charge you a fee of up to \$15.00 or 5% of your monthly rent, whichever is greater, as a fee for late payment of rent. The rent must be five or more days late before a late fee can be charged. If you receive a rent subsidy through the Section 8 program, only your share of the rental payment may be used to determine the amount of the fee.



Maintaining Decent Conditions At The Unit

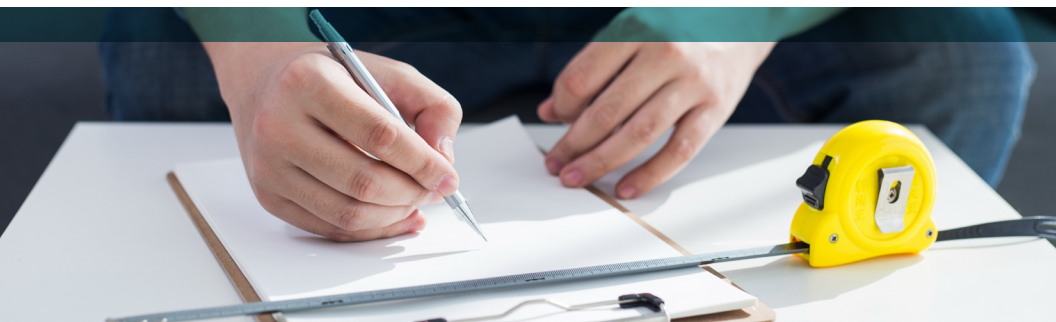
Landlord is required to furnish a “fit and habitable” unit. The unit you rent must be sanitary and safe place to live according to state and local definitions. Since the City of Raleigh has a minimum housing code, the unit must meet all requirements of that code in addition to the requirements imposed by state law. Among these requirements are having a properly working toilet, safe electrical wiring, a smoke detector, a carbon monoxide detector (required for units having a fossil-fuel burning heater or appliance, fireplace, or an attached garage), stair rails, heating facilities capable of heating living areas to 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from November 1 through March 31, and other requirements. You can get further information about what is required from the City of Raleigh’s Code Enforcement Division of the Housing and Neighborhoods Department listed at the end of this Handbook

Landlord is required to keep the unit free from “imminently dangerous conditions.” The unit must be free of unsafe conditions that pose an immediate danger to the health or safety of tenants. Such conditions include: unsafe wiring, unsafe flooring, unsafe ceilings and roofs, unsafe chimneys and flues, lack of drinkable water, lack of operable locks on all doors to the outside, broken windows or lack of operable locks on all windows on the ground floor, lack of heat for all living areas, lack of an operable toilet, lack of an operable bathtub or shower, rat infestation as a result of defects in structure, and excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation and mold.

Landlord is required to make repairs. The owner and the property manager (if there is one) are required to fix anything that breaks in the unit. Everything supplied with the unit—including appliances such as a stove or refrigerator, toilets, showers, doors, windows, and other items—must work properly. If anything does not work properly, or if an unsafe condition exists, you need to notify the owner or manager immediately. It is best to do so in writing and to keep a copy for your records. Until the owner or landlord is notified of the problem, he or she is generally not responsible for fixing it.

Except for emergency conditions at the unit, you need to allow the owner a reasonable amount of time to make the needed repair. The landlord must fix any of the “imminently dangerous” conditions also within a reasonable amount of time once they know of the condition. What is considered a reasonable amount of time will depend on the severity of the condition or how bad it is. Make sure to clearly explain the problem in your note to the landlord and follow it up as quickly as you can with a phone call. See the final page of this Handbook for a sample note form. Make a note for your records of each time you contacted the owner or manager about the problem, what you said, and what they said. If there is a dispute later, having a written record of what happened will be valuable.

Can I be evicted for complaining? No, you cannot. North Carolina law protects your right as a tenant to complain about conditions at your unit—to your landlord or to a government agency. If your landlord tries to evict you for making a complaint, explain to the magistrate at the eviction hearing (discussed below) that this eviction is in “retaliation” for your complaint, and ask them to dismiss the eviction.



What if my landlord won't make needed repairs? If a reasonable time has passed and the landlord has not made the repairs, you may need to consider: (1) calling City of Raleigh's Code Enforcement Division of the Housing and Neighborhoods Department, (2) filing a lawsuit asking a court to require that the landlord make the repairs, or (3) paying for the repairs yourself. If you pay for the repairs, get written proof of what was done, when and by whom (invoices are the best proof of this), copies of any permits, and receipts for any money you paid (including payments to contractors or for supplies). Keep the originals, but submit a copy of these bills to the owner or manager and ask them to pay you back in cash or give you a credit on next month's rent. It is also a good idea to report the problems to the City of Raleigh's Code Enforcement Division of the Housing and Neighborhoods Department listed at the end of this Handbook. This office will send a Housing Inspector to your unit, and they will determine if the landlord has violated the City's Minimum Housing Code. If they have, the inspector will send the landlord a notice to make the repairs. The inspector is required to allow the property owner a period of time to make the repair and to provide the property owner due process. If the repairs can be made at a reasonable cost (50% or less), the owner can choose to make the repairs or vacate and close the property; if the repairs cannot be made at a cost of 50% or less, the owner can make the repairs or demolish the property. No person may live in a house that has been determined to be Unfit or Unsafe. If this happens, you will need to move, but you cannot be held legally liable for any rent after the date the unit has been ordered closed. You will not be able to move back to the property until there is a "Certificate of Compliance" issued saying it is safe. Finally, consider prosecuting your own legal action against the landlord, by seeking a "rent rebate." How to do so is discussed in the next few paragraphs.

Am I still responsible for rent while the unit is not fixed? If you do not make rental payments due under your lease, your landlord can declare you in violation of the lease and then seek to enforce his rights. If, however, he uses a legal eviction action—called "summary ejectment"—you may present the problems with the unit as part of your defense. The problems which he did not repair make the unit less valuable and you need to ask at the court hearing for a refund—called a "rent rebate"—for any rent that you have paid beyond what the unit was worth with its problems. What it was worth will be different in every case—based upon how serious the problems are the size of the unit, and other factors. You are entitled to explain to the Magistrate at the court hearing how much you think the unit was actually worth with its problems. Also, you may claim reimbursement for any costs you have paid related to the repairs. Finally, you may ask the Magistrate to rule that the landlord's failure to repair the unit was an "unfair and deceptive trade practice"—which would increase the value of your claim against the landlord.

Even if your landlord does not file a court eviction against you, you may choose to take the landlord to court for his failure to make needed repairs. In a case you file against them, you can ask for the same things—reimbursement for rent you have paid beyond the actual rental value and costs you have paid to fix a problem.

The easiest way to file an action against your landlord is to sue him or her in Wake County Small Claims Court. In Small Claims Court, monetary damages as high as \$10,000.00 may be awarded. To file such an action, go to the office of the Wake County Clerk of Superior Court, Civil Division, at the Wake County Courthouse. Ask for and fill out three copies of these forms, which are provided, free of charge: 1) Summons 2) Complaint for Money Owed and 3) Petition to Sue/Appeal as an Indigent. If the court clerk approves the request made on your Petition form, you will not need to pay any court filing fee, which is currently \$96.00, or the service fee, which is currently \$30.00.

Once these forms are filled out, you will then give the copies to the court clerk who will give you a date for your court hearing. If you need additional advice, you may contact your local Legal Aid office. Be sure to bring as much proof as you can—witnesses, photographs, an inspection report if you have one, and repair receipts—to the court hearing so the magistrate can fully understand what happened.

Your responsibilities for conditions at the unit. You are responsible for using due care in your use of the unit. That means keeping it clean and using all appliances, toilets, and sinks in a safe and responsible manner. You will have to replace batteries in the smoke detector and the carbon monoxide detector when they run out. Generally, your landlord may charge you reasonable costs for fixing anything that you, one of your guests, or a member of your household breaks.



Special Modifications To The Unit

People with disabilities can modify the unit so they can live there. If you or a member of your household has a disability that makes it impossible or very difficult for you to live at your unit, you may make reasonable modifications to the unit or to common areas. To do so, however, you must first notify the owner of what you would like to change and, if the landlord requests it, you may be required to undo the modifications inside your unit after you move out. Some landlords or community groups will help you make modifications, such as a ramp over steps or grab bars in a bathroom. If you live in public or subsidized housing, you have additional rights for such modifications to be made without charge to you. If you need additional information on your rights or wish to complain about the landlord's actions, you may contact either the North Carolina Human Relations Commission or the Fair Housing Project of Legal Aid of North Carolina, both listed at the end of the Handbook

Victims Of Domestic Violence, Sexual Assault, Or Stalking: Protections

Discrimination in the housing context based on the fact that you or a household member has suffered domestic violence, stalking, or sexual assault is illegal. A landlord cannot evict you, decide not to renew your lease, or otherwise retaliate against you or a household member for any of these reasons. Further, if you or a household member is a victim of domestic violence, sexual assault, or stalking you may terminate the lease early and have your locks quickly changed, or change them yourself.

To terminate the lease, you must notify the landlord that you wish to do so and give him or her a copy of either a domestic violence protective order, a criminal order that restrains a person from contacting you or a household member, or a valid Address Confidentiality Card. If you or a household member is a victim of domestic violence or sexual assault, in addition to the above information, you must also give the landlord a copy of the safety plan created by a domestic violence or sexual assault program that recommends that you move. The termination is effective 30 days after the landlord receives this information.

To change the locks, you must make a request to your landlord. If the perpetrator lives with you, you must give your landlord a copy of your domestic violence protective order or other order that restrains the perpetrator from staying at the unit. The landlord then has 72 hours to change the locks or tell you that you may do so. If the landlord does neither of these things, you may then legally change the locks yourself after the 72 hour period has expired.

If the perpetrator does not live with you, you can request that the locks be changed and you do not have to supply any other documentation to the landlord. They are supposed to change the locks within 48 hours after receiving the request. If they don't, then you may change the locks on your own. You must pay the costs of the lock change yourself and provide a key to the new locks to your landlord within 48 hours.

Leaving Your Rental Unit

There are different circumstances in which you may leave your rental unit.

These include your choosing to move out, your landlord asking you to move out or your landlord using a court action to require you to move out. Each of these will be discussed on the following pages.

When you wish to move out. Whenever you wish to move out, whether or not you can do so freely depends upon the lease agreement you have made. You as a tenant are required to follow the terms of whatever lease agreement you have made with the landlord. For example, if the lease is in effect for six months, you may not move out until those six months have passed. If you do, the landlord may be able to hold you responsible for any money they have lost due to your moving and they can use your security deposit to help cover those costs. Once the date is reached when your lease term is over, you may move out.

Many leases provide for automatic renewal once the first lease term is up. This means that the lease keeps “rolling over” into a new term each time it reaches the final date. Such leases contain provisions requiring the tenant, or in some case the landlord, to provide advance notice before the tenant will be allowed/required to move out. Often such notice must be given in writing 30 days in advance. You must follow whatever the lease you have signed says in order to effectively end your legal obligations under the lease.



When your landlord wishes you to move out. Your landlord is bound just as you are by the lease. They must follow its terms. He cannot require you to move out before your lease term has ended and they must follow all procedures stated in the lease for getting you to move out, such as giving you a written notice in advance. They may not take action on their own to force you to move, such as turning off your electricity or water, or changing your locks. Such acts are illegal under North Carolina law.

How your landlord may legally evict you. If your landlord has the legal right under the lease to ask you to move out, and you do not leave, your landlord may file a court eviction action to force you to move out. This action, called a “summary ejectment,” is heard before a civil Magistrate. The action is started by the landlord filing a “complaint.” You will be notified in writing of the time and date of the hearing by a document called a “summons.” You must appear at the designated date and time to present any defenses you have to the landlord’s claims. The landlord can ask at the hearing for possession of his unit back and for any money he feels you owe him.

The reasons the landlord can ask to have you removed include: (1) if the term of your lease is up, (2) if you have failed to pay rent when due, (3) if you have broken a condition contained in your lease (such as no pets, or no extra occupants), or (4) if you commit a criminal act involving drugs or that otherwise interferes with your neighbors. The landlord must state facts at the hearing proving that you have done one of these things. You have the right at the hearing to state any facts in your favor, including having other people testify and presenting documents, photographs, or other evidence to the magistrate for their consideration. If you show that you did not do the criminal activity yourself or that your landlord accepted your current rent or if you bring to court all the rent money you owe plus court costs, you may be able to win the eviction court case.

If you have legal claims against the landlord once they have filed a Complaint for Summary Ejectment, you may bring them up at the Small Claims hearing. This must be done in writing. As described above, you would need to write the claim and facts supporting your claim clearly and legibly, and then sign and date your document. You would need to bring copies to court with you to present to the magistrate at the hearing, and to the other side. One example of a claim a tenant might have against a landlord would be a claim for damages to personal property caused by the landlord’s failure to repair a broken pipe that leaked water and damaged some of the tenant’s belongings. A tenant might also seek a “rent rebate,” as explained above, due to the landlord’s failure to make other necessary repairs.

After hearing from both sides in the case, the Magistrate will issue a decision and, unless appealed by either side within 10 calendar days, it will become final. If magistrate's decision was not in your favor and do not appeal, you will receive a letter from the sheriff stating when you must move. If you are not out of the unit by the date indicated, you will be locked out of the unit by the sheriff and you will have only 10 additional days to remove your belongings.

Fees related to eviction actions. Written leases entered into after October 1, 2009 may, with some exceptions, require tenants to pay the following fees related to eviction actions:

- **Complaint Filing Fee.** A lease may allow a complaint filing fee of \$15.00 or 5% of the monthly rent, whichever is greater, if a tenant is in default of the lease, the landlord filed and served a Complaint for Summary Ejectment or Money Owed, the tenant cured the default, and the landlord dismissed the case prior to any judgment or court decision being issued.
- **Court Appearance Fee.** A lease may allow a court appearance fee of 10% of the monthly rent if the tenant is in default of the lease, the landlord filed and served a Complaint for Summary Ejectment or Money Owed, landlord wins in small claims court, and neither party appeals the case.
- **Second Trial Fee.** A lease may allow a second trial fee of 12% of the monthly rent for a new trial following an appeal of the Magistrate's judgment. To qualify for this fee, the landlord must prove the tenant was in default of the lease and the landlord prevailed.

A landlord may claim only one of these fees in connection to an action for ejectment or money owed, and the fees may not be deducted from future rental payments. If a tenant receives a rent subsidy through the Section 8 program, only the tenant's share of the rental payment may be used to determine the amount of the fee.

Security Deposit

What about my security deposit? Your landlord may apply your security deposit to certain costs, including unpaid rent or damage you caused to the unit beyond normal wear and tear. If he does so, he must explain in writing what costs he has paid with funds from the deposit, as discussed above in Paying a Deposit. Be sure and leave your new address with him. If the landlord does not return your deposit or notify you of the costs he has deducted from your deposit, you may file a legal action against him. You may file such an action using the Complaint for Money Owed described above, in Small Claims Court.

Foreclosure

What are my rights if there is a foreclosure? Sometimes a landlord does not pay the mortgage on the rental property and the property goes into foreclosure. Foreclosure can result in the rental housing being sold by whoever holds the mortgage, usually a bank. You have certain rights regarding notice of the foreclosure sale, termination of the lease and right to stay after the sale based on the type of housing you are renting.

Single Family Rental

- a. A Notice of Foreclosure Sale must be mailed to the tenant at least 20 days before the sale.
- b. The Tenant has the right to end the lease after receiving the Notice of Foreclosure Sale by giving the landlord written notice. The notice for the end of the lease is effective at least 10 days, but not more than 90 days, after the date of the Notice of Foreclosure Sale.
- c. The Purchaser at the foreclosure sale must allow the tenant to stay at the property until either the end of the existing lease term or one year from the date the purchaser acquires "title" (legal ownership of the property) whichever is sooner. The purchaser is not required to renew the lease. At the end of the lease term or one year, purchaser must give 10 days' notice before obtaining a Writ of Possession to evict the tenant.
- d. In order for you to be able to remain at the property, the following three conditions must be met:
 - I. There must be a **written** lease;
 - II. Amount of rent must not be substantially below fair market rent, unless rent is subsidized; and
 - III. Tenant cannot be the child, parent or spouse of the person who lost the property to foreclosure.
- e. If the lease is oral, terminable at will, or if the property will be purchaser's primary residence, then the purchaser must give the tenant at least 90 days' written notice to vacate before obtaining a Writ of Possession to evict the tenant.

Multi-family property with less than 15 rental units

- a. Notice of foreclosure sale shall be mailed to the tenant at least 20 days prior to the sale
- b. Tenant has right to terminate lease after receiving notice of foreclosure sale by giving landlord written notice effective at least 10 days, but not more than 90 days, after the date of the notice of sale.
- c. Purchaser of foreclosed property must give 10 days' notice to tenant before obtaining order of possession from Clerk of Court.

Multi-family Property with 15 or more rental units

- a. Purchaser of foreclosed property must give 30 days' notice to tenant before obtaining order of possession from Clerk of Court. (G.S. 45-21.29(k)(5)) – No other notice required.



Where Can I Go For Help?

1. **Fair Housing Project, a Project of Legal Aid of North Carolina**
1-855-797-3247 (toll free), info@fairhousingnc.org – Provides free legal assistance to low income individuals throughout North Carolina.

2. NC Human Relations Commission

1-919-807-4420 or 1-866-324-7474 (toll free) – NC state agency that investigates complaints of discrimination and enforces NC's Fair Housing Law.

3. NC Attorney General's Office – Consumer Protection

1-919-716-6000; 1-877-5-NO-SCAM (toll free), www.ncdoj.gov – The Consumer Protection Division of the Attorney General's Office enforces North Carolina's consumer protection laws, which are aimed at preventing unfair or deceptive trade practices.

4. City of Raleigh's Code Enforcement Division of the Housing and Neighborhoods Department

1-919-996-2444, housing.inspections@raleighnc.gov – Inspects apartments/houses to make sure no violation of Raleigh Housing Code.

5. North Carolina Bar Association Lawyer Referral Service

1-919-677-8574 or 1-800-662-7660 (toll free). To help you locate an attorney to assist you. A fee of up to \$50.00 may be charged you for a consultation of 30 minutes or less.

INSTRUCTIONS:

Complete and provide to your landlord. Keep a copy for your records.

Request For Repairs

My name is: _____

My address is: _____

My phone number is: _____

Today's date is: _____

Dear: _____

I rent my home from you. Unfortunately, I am experiencing some problems with my home which I need you to fix. I am willing to open my home to you at any reasonable time so that you can make these needed repairs. The repairs which I need are as follows:



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