



CHANGES TO RESIDENTIAL RENTAL CONTRACT

The standard Residential Rental Contract (form 410-T) has been updated in response to recent legislation enacted by the NC General Assembly ([Senate Bill 1924](#) and [Senate Bill 661](#) (both of which may be accessed on the NC General Assembly's website by clicking on the bill number). The purpose of this article is to summarize the changes to the form.

Fees (page 1). With respect to leases entered into on or after **October 1, 2009**, a landlord may charge certain fees related to an eviction of a tenant. The new charges are:

- **Complaint-Filing Fee.** A fee of up to \$15.00 or five percent (5%) of the rental payment, whichever is greater, may be charged if: (i) a tenant is in default of the lease, (ii) the landlord files and serves a complaint for summary ejectment and/or monies owed, (iii) the tenant cures the default or claim, and (iv) the landlord dismissed the complaint prior to judgment.
- **Court Appearance Fee.** A fee of up to ten percent (10%) of the rental payment may be charged if: (i) a tenant is in default of the lease, the landlord files, serves, and successfully prosecutes a complaint for summary ejectment and/or monies owed in small claims court, and (iv) neither party appeals the judgment of the magistrate.
- **Second Trial Fee.** A fee of up to twelve percent (12%) of the rental payment may be charged for a new trial following an appeal from the judgment of a magistrate, provided the landlord proves: (i) that the tenant is in default of the lease and (ii) the landlord prevails.

The "Summary Ejectment Administrative Fee" blank that was provided for in the previous version of the rental contract has been eliminated and replaced by blanks for the above-referenced fees. It is important to note the following:

- Only ONE of these fees may be charged for an eviction
- The fee charged is in addition to court costs and normal late fees
- The fee must be specifically provided for in the rental contract
- *A summary ejectment administrative fee may NOT be charged for evictions on any lease entered into on or after October 1, 2009. Any fees other than those listed above and a reasonable attorney's fee are void and against public policy, and any attempt to collect such a fee could subject a landlord or property manager to a claim for unfair and deceptive trade practices.*
- If the rent is subsidized by HUD, the US Department of Agriculture, a State Agency, a public housing authority, or a local government, the fee shall be calculated on the tenant's share of the rent only

Tenant Security Deposit (paragraph 4). Effective **October 1, 2009**, if the extent of a landlord's claim against the security deposit cannot be determined within 30 days, the landlord will be allowed to 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 then provide a final accounting within 60 days after termination of the tenancy and delivery of possession of the premises to the landlord. This change in the Tenant Security Deposit Act recognizes the fact that landlords sometimes have difficulty determining the extent of the landlord's damages within 30 days, such as when a contractor performing repairs has yet to bill the landlord. *Notwithstanding the new law, landlords and property managers should continue to adhere to provisions in existing leases which require a final accounting within 30 days after termination of the tenancy and delivery of possession of the premises.*

Landlord's Obligations (paragraph 6). Effective **October 1, 2009**, landlords are required to repair or remedy any "imminently dangerous condition" once the landlord has actual knowledge of the condition or receives notice of it from the tenant. That obligation is set forth in new subsection (e) of paragraph 6. According to the new law, the term "imminently dangerous condition" means any of the following:

- Unsafe wiring
- Unsafe flooring or steps
- Unsafe ceilings or roofs
- Unsafe chimneys or flues
- Lack of potable water
- Lack of operable locks on all doors leading to the outside
- Broken windows or lack of operable locks on all windows on the ground level
- 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
- Lack of an operable toilet
- Lack of an operable bathtub or shower
- Rat infestation as a result of defects in the structure that make the premises not impervious to rodents
- Excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation or mold

Although the landlord must repair such items whether or not the damage was caused by the tenant, the new law specifically provides that the landlord may recover from the tenant the reasonable cost of repairs that are the tenant's fault. *This obligation applies to all residential leases, not just those entered into on or after October 1, 2009.*

Smoke and Carbon Monoxide Detectors (paragraph 7). Effective **January 1, 2010**, the law will require the installation of battery-operated or electrical carbon monoxide detectors on each level of any residential rental unit that has (1) a fireplace, (2) a fossil-fuel burning heater or appliance, or (3) an attached garage. The new law's provisions regarding responsibility for repairs to carbon monoxide detectors and installation and replacement of batteries in battery-operated devices are the same as the current law regarding smoke detectors. *This obligation applies to all affected leases, not just those entered into on or after January 1, 2010.*

Tenant's Default (paragraph 16). The new fees for summary ejectment proceedings referenced on page 1 of form 410-T are described in detail in paragraph 16. The fact that the landlord may charge and retain only one of the fees is reiterated in paragraph 16, and the limitation on the amount of the fees that may be charged in cases involving Section 8 housing and other subsidized leases is also noted.

Availability of forms. A copy of the updated form is available on NCAR's Web site. To access the form, go to www.ncrealtors.org and enter your user name and password. Your user name is the e-mail address that you have on file with NCAR and your default password is your nine-digit NRDS number. Click on "Forms and Contracts" on the top toolbar then click on the blue and white "Forms and Contracts Library" logo. A marked-up copy of the form which highlights the exact wording changes is also available by clicking on the following link: <http://www.ncrealtors.org/uploads/markup09-410.pdf>

An updated version of the form has been sent to all of NCAR's approved forms software vendors. The updated version of the form will be available from your software vendor by mid-October.

For more information, contact the NCAR Legal Dept. at 800-443-9956.