

# CONTRACTS & LEASES

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## AGENDA

1. The Fine Print: Contracts Basics
2. Beyond the Signature: A Clause-by-Clause Breakdown of a Lease
3. From Breach to Bench: Deciding Real World Contract Disputes



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## THE FINE PRINT

Contracts Basics

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# HOW TO ANALYZE A CONTRACTS CASE

- Is there a contract?
- Who are the parties to the contract?
- What are its terms?
- Did defendant breach the contract?
- What damages is the plaintiff entitled to recover?

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# 1. CONTRACT FORMATION



OFFER



CONSIDERATION



ACCEPTANCE



COUNTEROFFER

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## DEFENSES



### Statute of Frauds

- Sale of land, leases over 3 years
- Agreement to pay debt of another
- Contracts for the sale of goods over \$500



### Minors

- Under the age of 18
- Cannot be enforced against minor
- Minor may enforce



### Duress

- Forcing a party to enter a contract
- Entering a contract must be voluntary

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## DEFENSES



### Fraud

- False representation of or concealed material fact
- Intended to deceive
- Injured was in fact deceived
- Entered contract as result of reliance on falsity



### Unconscionability

- Inequality of the bargain so manifest as to shock the judgment of person of common sense
- Terms are so oppressive no reasonable person would make/no honest person would accept them



### Public Policy/Illegality

- Violates public policy
- Involves illegal activity

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## 2. WHO ARE THE PARTIES?



Lawsuits for breach of contract have a fundamental requirement that the parties who are bound by the contract should be the parties who are suing and are sued. So, it's important to figure out who is actually bound by the contract.

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## 3. WHAT ARE THE TERMS?



If the agreement is in writing, ask for a copy and read it carefully. Are the terms clear?



If the agreement is not in writing, listen to the testimony about the terms.



What rules of evidence should the magistrate be mindful of in determining the terms?



Are there additional or different terms written into the agreement by the law?

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# 4. DID DEFENDANT BREACH THE CONTRACT?

Once you have determined the terms of the contract, whether a breach has occurred is not hard to determine.

HOWEVER, if you skip the other questions and go straight to the question of breach, you increase the chances of making a wrong decision. Resist the temptation to move on to breach if you can't figure out what the terms are. If you can't figure out what the terms are, the plaintiff loses.



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# 5. WHAT ARE THE DAMAGES?

The standard measure of damages in an action for breach of contract is that amount of money necessary to restore the non-breaching party to the position s/he would have occupied in the event there had been no breach.

Be on the lookout for the plaintiff's duty to mitigate damages.

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## DAMAGES



DIRECT



INCIDENTAL



CONSEQUENTIAL



INTEREST FROM DATE OF BREACH

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That there was a contract  
 That the plaintiff and defendant were parties to the contract.  
 That the terms of the contract were A, B, C, etc.  
 That the defendant breached term A as follows: ...  
 That the breach by defendant resulted in my being damaged in this particular way ...  
 The monetary amount of my damages is \$X, and here's how I calculated \$X ...

**DECIDING THE CASE**

Plaintiff has the burden of proving by the greater weight of the evidence each of the following essential elements:

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**BEYOND THE SIGNATURE**

A Clause-by-Clause Breakdown of a Lease

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**RESIDENTIAL RENTAL CONTRACT**

: THIS AGREEMENT WILL BECOME LEGALLY BINDING ONLY WHEN IT HAS BEEN SIGNED BY TENANT BY OR ON BEHALF OF LANDLORD

TENANT: \_\_\_\_\_ (C)

LANDLORD: \_\_\_\_\_ (L)

REAL ESTATE MANAGEMENT FIRM: \_\_\_\_\_

CITY: \_\_\_\_\_ COUNTY: \_\_\_\_\_ STATE OF NORTH CAROLINA

Street Address: \_\_\_\_\_

Apartment Complex: \_\_\_\_\_ Apartment \_\_\_\_\_

Other Description (Room, portion of above): \_\_\_\_\_

**NC ASSOCIATION OF REALTORS, INC. FORM 410-T**

Leases shall include both the inside and outside of any dwelling unit, and any exterior areas such as any front/back/side yard, porch, deck, or balcony, unless otherwise specified in the lease agreement.

LEASE TERM: Beginning Date of Lease: \_\_\_\_\_ Ending Date of Lease: \_\_\_\_\_

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# TERMS



Rent, Fees & Joint & Several Liability



Termination & Renewal



Security Deposit



Residential Rental Agreements Act

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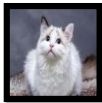
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# TERMS



Right of Entry



Pets



Tenant's Breach/Termination



Assignment

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## RENT, FEES, & JOINT & SEVERAL LIABILITY

- Page 1 and Paragraph 27
- GS 42-26 Authorized fees, costs, and expenses
- Parties who sign as tenants are jointly and severally liable for all obligations under the lease.

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## TERMINATION & RENEWAL

- Paragraph 1
- If the lease contains a notice provision, then the lease controls as to amount and type of notice required to terminate or renew.
- If the lease is silent as to notice, then GS 42-14 controls notice to terminate.

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## SECURITY DEPOSIT

- Page 1 and Paragraph 4
- GS Ch. 42, Art. 6
  - Where held
  - Permitted uses
  - Landlord's obligations
  - Remedies

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## RESIDENTIAL RENTAL AGREEMENTS ACT

- Paragraphs 5 and 6
- GS Ch. 42, Art. 5
  - Implied in all residential rental agreements
  - Cannot be waived either implicitly or explicitly

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## RIGHT OF ENTRY

- Paragraph 12
- Property rights are a bundle of sticks. The sticks represent legal rights associated with property ownership.
- Landlord transfers some of the "sticks" to the tenant.

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## PETS

- Paragraph 12 and Pet Addendum
- GS 42-53 Pet deposits.
- Remember: pet fees do not apply to assistance animals.

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## TENANT'S BREACH TERMINATION

- Paragraph 17
- Forfeiture clause, if written correctly, allows landlord to terminate the lease for tenant's breach and reenter the premises.
- Landlord must strictly follow any procedures set out in the forfeiture clause, e.g., notice of default and time to cure.
- Landlord must use summary ejection procedure set out in GS Ch. 42, Art. 2A.
- GS 42-26(c) acceptance of partial rent does not waive breach

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## ASSIGNMENT

- Paragraph 25
- Landlord can retain the right to dispose of the property, including subleases and assignments.
- If landlord allows sublease, landlord must evict original tenant, not subtenant, in the event of a breach.
- If landlord allows the tenant to assign his interest to a third party, then landlord must evict the assignee.

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## QUESTIONS?

- In a summary ejectment hearing, what document should you always ask to see?
- What are you looking for in the lease?
- What happens if the plaintiff fails to prove every element of one of the grounds for summary ejectment?

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## FROM BREACH TO BENCH

Deciding Real World Contract Disputes

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**RESEARCH SHOWS THAT WHEN LITIGANTS BELIEVE THE COURT PROCESS IS FAIR, THEY ARE MORE LIKELY TO COMPLY WITH COURT ORDERS AND THE LAW GENERALLY.**

Emily Gold LaGratta

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## DIMENSIONS OF A FAIR PROCESS



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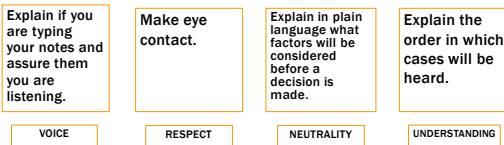
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## EXAMPLES OF PRACTICES



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## DROP IN THE CHAT

- Practices that make litigants feel heard.
- Practices that treat litigants with dignity.
- Practices that affect litigants' perception that decisions are made neutrally.
- Practices that aid litigants in understanding the language of the court and how decisions are made.

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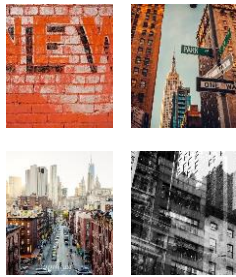
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## SUMMARY

- Always start with the contract/lease at issue!
- Enforce the terms of the contract/lease.
- Establish practices that support a fair process.



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## QUESTIONS?

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