Article 5.
Residential Rental Agreements.

§ 42-38. Application.

This Article determines the rights, obligations, and remedies under a rental agreement for a dwelling unit within this State. (1977, c. 770, s. 1.)

§ 42-39. Exclusions.

(a) The provisions of this Article shall not apply to transient occupancy in a hotel, motel, or similar lodging subject to regulation by the Commission for Public Health.

(a1) The provisions of this Article shall not apply to vacation rentals entered into under Chapter 42A of the General Statutes.

(b) Nothing in this Article shall apply to any dwelling furnished without charge or rent. (1973, c. 476, s. 128; 1977, c. 770, ss. 1, 2; 1999-420, s. 3; 2007-182, s. 2.)

§ 42-40. Definitions.

For the purpose of this Article, the following definitions shall apply:

(1) "Action" includes recoupment, counterclaim, defense, setoff, and any other proceeding including an action for possession.

(2) "Premises" means a dwelling unit, including mobile homes or mobile home spaces, and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities normally held out for the use of residential tenants.

(3) "Landlord" means any owner and any rental management company, rental agency, or any other person having the actual or apparent authority of an agent to perform the duties imposed by this Article.

(4) "Protected tenant" means a tenant or household member who is a victim of domestic violence under Chapter 50B of the General Statutes or sexual assault or stalking under Chapter 14 of the General Statutes. (1977, c. 770, s. 1; 1979, c. 880, ss. 1, 2; 1999-420, s. 2; 2005-423, s. 5.)

§ 42-41. Mutuality of obligations.

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.)

§ 42-42. Landlord to provide fit premises.

(a) The landlord shall:

(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 alarms, either battery-operated or electrical, having an Underwriters' Laboratories, Inc., listing or other equivalent national

testing laboratory approval, and install the smoke alarms 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 alarms 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 alarm 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 alarm at the beginning of a tenancy and the tenant shall replace the batteries as needed during the tenancy, except where the smoke alarm is a tamper-resistant, 10-year lithium battery smoke alarm as required by subdivision (5a) of this subsection. 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.

(5a) After December 31, 2012, when installing a new smoke alarm or replacing an existing smoke alarm, install a tamper-resistant, 10-year lithium battery smoke alarm. However, the landlord shall not be required to install a tamper-resistant, 10-year lithium battery smoke alarm as required by this subdivision in either of the following circumstances:

a. The dwelling unit is equipped with a hardwired smoke alarm with a battery backup.

b. The dwelling unit is equipped with a smoke alarm combined with a carbon monoxide alarm that meets the requirements provided in subdivision (7) of this section.

(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 alarm 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 alarms 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 alarm per rental unit per level shall be deemed to be in compliance with standards under this subdivision covering the location and number of alarms. The landlord shall replace or repair the carbon monoxide alarms 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 alarm 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 alarm 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 alarm may be combined with smoke alarms if the combined alarm does both of the following: (i) complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for smoke alarms; 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, appliance, or fireplace, and in any dwelling unit having 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; 2010-97, s. 6(a); 2012-92, s. 1.)

§ 42-43. Tenant to maintain dwelling unit.

(a) The tenant shall:

(1) Keep that part of the premises that the tenant occupies and uses as clean and safe as the conditions of the premises permit and cause no unsafe or unsanitary conditions in the common areas and remainder of the premises that the tenant 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 used by the tenant as clean as their condition permits.

(4) Not deliberately or negligently destroy, deface, damage, or remove any part of the premises, nor render inoperable the smoke alarm or carbon monoxide alarm provided by the landlord, 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 the tenant's exclusive control unless the damage, defacement or removal was due to ordinary wear and tear, acts of the landlord or the landlord's 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 of or repairs to a smoke alarm or carbon monoxide alarm. The landlord shall ensure that a smoke alarm and carbon monoxide alarm are 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 alarm and battery-operated carbon monoxide alarm at the beginning of a tenancy and the tenant shall replace the batteries as needed during the tenancy, except where the smoke alarm is a tamper-resistant, 10-year lithium battery smoke alarm as required by G.S. 42-42(a)(5a). 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.

(b) The landlord shall notify the tenant in writing of any breaches of the tenant's obligations under this section except in emergency situations. (1977, c. 770, s. 1; 1995, c. 111, s. 3; 1998-212, s. 17.16(j); 2008-219, s. 3; 2012-92, s. 2.)

§ 42-44. General remedies, penalties, and limitations.

(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 alarm under the provisions of G.S. 42-42(a)(5) or a carbon monoxide alarm 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. After December 31, 2012, if the landlord installs a new smoke alarm or replaces an existing smoke alarm, the smoke alarm shall be a tamper-resistant, 10-year lithium battery smoke alarm, except as provided in G.S. 42-42(a)(5a). The landlord may temporarily disconnect a smoke alarm or carbon monoxide alarm in a dwelling unit or common area for construction or rehabilitation activities when such activities are likely to activate the smoke alarm or carbon monoxide alarm or make it inactive.

(a2) If a smoke alarm or carbon monoxide alarm 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 alarm or carbon

monoxide alarm 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 alarm or carbon monoxide alarm 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; 2012-92, s. 3.)

§ 42-46. Authorized fees.

(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.)

§§ 42-47 through 42-49: Reserved for future codification purposes.