







ASSISTANCE ANIMALS IN SUMMARY EJECTION CASES & LEGISLATIVE UPDATE

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FALL MAGISTRATES' CONFERENCE 2023

1

LEARNING OBJECTIVES

-  Review Grounds for SE
-  Apply Federal and State FHAs in SE Cases
-  Identify Steps in Reasonable Accommodation Analysis
-  Examine Recent State Legislation Affecting SE Cases

2


Grounds for Eviction



Breach of a Lease Condition



Failure to Pay Rent



Holding Over

3

Elements

Breach of a Lease Condition	Failure to Pay Rent	Holding Over
<ul style="list-style-type: none">• LL/T Relationship• Forfeiture clause• Breach of forfeiture clause• LL followed procedure in forfeiture clause	<ul style="list-style-type: none">• LL/T Relationship• Terms of lease related to rent and due date• T failed to pay rent when due• LL made clear and unequivocal demand• LL waited 10 days after demand to file• T has not yet paid the full rent owed	<ul style="list-style-type: none">• LL/T Relationship• Terms of lease related to duration and procedure for termination, if any• LL followed procedure set out in lease or statutory notice to terminate• T has not vacated

4

Common Defenses

Breach of a Lease Condition	Failure to Pay Rent	Holding Over
<ul style="list-style-type: none"> • LL failed to strictly follow procedure for termination set out in lease • LL fails to prove T breached forfeiture clause • LL continues with rental even after becoming aware of T's breach* <p>*Exception GS 42-26(c) partial rent not waiver in lease</p>	<ul style="list-style-type: none"> • T does not owe rent because • T paid all rent due OR • LL's violation of RRAA offsets total amount of rent due • LL failed to make proper demand because • LL made demand before rent was due • Demand was not clear and unequivocal • LL failed to wait 10 days after demand before filing • Lease contains forfeiture clause • Tender 	<ul style="list-style-type: none"> • LL accepted rent for period(s) after the termination date • Improper notice

5

BREACH OF A LEASE CONDITION ELEMENTS

LL-T relationship

Forfeiture clause

T's breach

LL followed procedure in lease

6

THINGS TO WATCH OUT FOR

- Valid Forfeiture Clause in Lease
- Procedures in the Lease
- Waiver
- Lack of breach by T



7

STATUTORY FAILURE TO PAY RENT

LL-T relationship

Lease requires T to pay a certain amount of rent by a certain time

T failed to pay rent when it was due

LL subsequently made demand for payment

LL waited at least 10 days after demand to file for Summary Ejectment

8

THINGS TO WATCH OUT FOR

- Demand
- Tender
- Retaliatory Eviction



9

HOLDING OVER ELEMENTS

LL-T relationship

Terms of lease related to duration and procedure for termination, if any

LL has followed procedure in lease, or if none, given statutory notice to terminate

T has not vacated

10

THINGS TO WATCH OUT FOR

- Notice
 - Lease provision
 - Lease is silent, GS 42-14
 - Year-to-year 30 days
 - Month-to-month 7 days
 - Week-to-week 2 days
 - Mobile Home Space 60 days
- Retaliatory Eviction




11

RETALIATORY EVICTION

- Chapter 42, article 4A
- Cannot be waived by tenant
- Protected activities for which tenant cannot be evicted
- Landlord can rebut tenant's affirmative defense



12



State of North Carolina
Human Relations Commission

HOUSING DISCRIMINATION INQUIRY

Tenant's Protected Activities G.S.37.1(a)

1. A good faith complaint or request for repairs to the landlord, his employee, or his agent about conditions or defects in the premises that the landlord is obligated to repair under G.S. 42-42;
2. A good faith complaint to a government agency about a landlord's alleged violation of any health or safety law, or any regulation, code, ordinance, or State or federal law that regulates premises used for dwelling purposes;
3. A government authority's issuance of a formal complaint to a landlord concerning premises rented by a tenant;
4. A good faith attempt to exercise, secure or enforce any rights existing under a valid lease or rental agreement or under State or federal law; or
5. A good faith attempt to organize, join, or become otherwise involved with, any organization promoting or enforcing tenants' rights.

Your Name:		
Address:		
State:	Zip:	City:
Home Phone:		Work Phone:
Email Address:		
Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	Age:	Date of Birth:
Race:		
<input type="checkbox"/> Black	<input type="checkbox"/> White	<input type="checkbox"/> National Origin:
<input type="checkbox"/> Asian/Pacific Islander	<input type="checkbox"/> Alaskan Native	<input type="checkbox"/> American
<input type="checkbox"/> American Indian	<input type="checkbox"/> Other	<input type="checkbox"/> Hispanic
		<input type="checkbox"/> Middle Eastern
		<input type="checkbox"/> Other

Provide the name of the Housing Provider you believe discriminated against you:

Name of the Housing Provider:			
Address:			
State:	Zip:	City:	
Housing Provider's telephone number (with area code):			
Most recent date of alleged harm (that you believe was discrimination) to you:			
Do you think this happened to you because of your (check as appropriate):			
Color	Familiar Status	Race	Retaliation
Disability	National Origin	Religion	Sex

In your own words, briefly describe what happened to you that you believe to be discrimination.
A short description of what happened will be enough at this time.

Signature: _____ Date: _____

By signing this Housing Discrimination Inquiry, I declare that I have read this inquiry (including all attachments) and certify that it is true and correct to the best of my knowledge.
** You may submit this form via email to HRC.Complaints@oah.nc.gov **
** By completing this form you have not filed a complaint of housing discrimination. **

NC Office of Administrative Hearings - Civil Rights Division
Human Relations Commission, 1318 Mail Service Center, Raleigh, NC 27699
(919) 236-3919 phone / (919) 236-3946 fax
Housing Discrimination Inquiry Revision: 08/2017

13

**FEDERAL FAIR
HOUSING ACT 42
U.S.C.A § 3604**

- Makes it unlawful to discriminate in the rental of a dwelling based on handicap
- Applies to the renter, a person residing in or intending to reside in that dwelling after it is rented, or any person associated with the renter
- Discrimination includes:
 - Refusal to permit reasonable modifications at tenant's expense
 - Refusal to make reasonable accommodations in rules, policies, practices or services

14

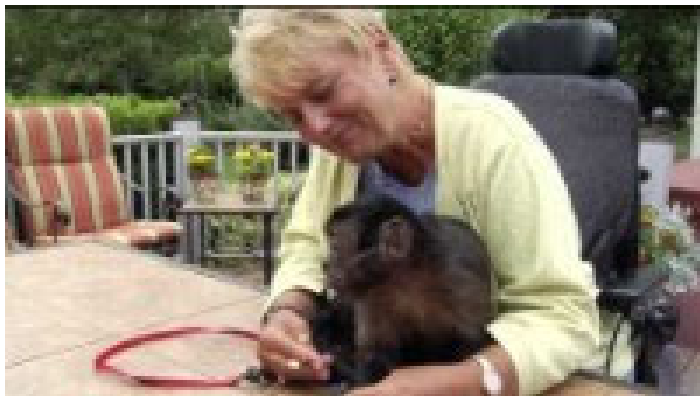
**STATE FAIR
HOUSING ACT
N.C.G.S. CH. 41A**

- Makes it an unlawful to discriminate in the rental of a dwelling based on handicap
- Unlawful discriminatory housing practices include:
 - Refusal to permit reasonable modifications at tenant's expense
 - Refusal to make reasonable accommodations in rules, policies, practices or services

15

**MONKEY SEE,
MONKEY DO**

Is allowing a physically handicapped tenant to have a capuchin monkey a reasonable accommodation?



16

MONKEY SEE, MONKEY DO

Is allowing a physically handicapped tenant to have a capuchin monkey a reasonable accommodation?



17



Animals
commonly
kept in
households

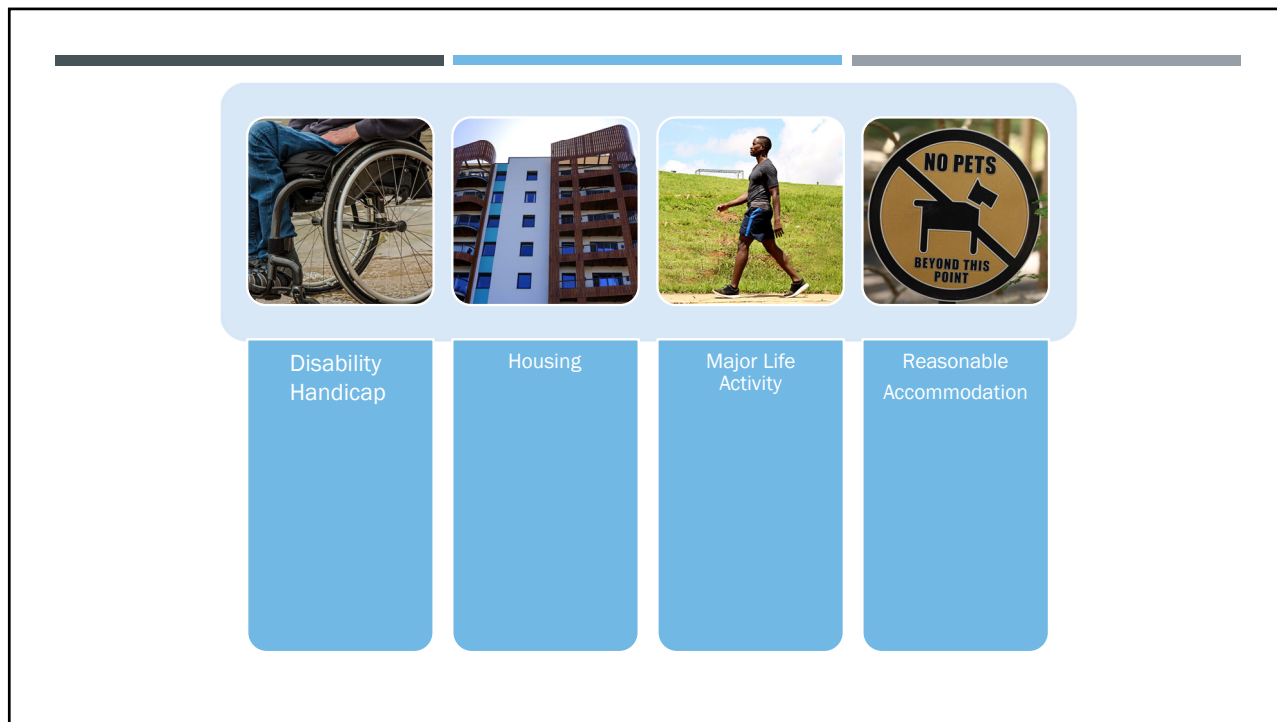


Assistance
Animals



Unique
Animals

18



19

EXAMPLES OF DISABILITIES

Observable	Non-Observable
<ul style="list-style-type: none"> ■ Blindness or low vision ■ Deafness or being hard of hearing ■ Mobility limitations ■ Intellectual impairments ■ Neurological impairments ■ Mental illness 	<ul style="list-style-type: none"> ■ Mental illness ■ Intellectual impairments ■ Neurological impairments ■ Cognitive disability ■ Traumatic brain injury

20

TO QUALIFY FOR A REASONABLE ACCOMMODATION:

- Tenant must have a disability, and
- The reasonable accommodation must be necessary to afford the tenant an equal opportunity to use and enjoy the dwelling.
- Tenant must make a request.
 - No “magic words”
 - Timing of the request



21

THINGS TO REMEMBER ABOUT ANIMALS

- Animal must meet the definition of a service animal or assistance animal, if not, it's a pet.
- Tenant must show a disability-related need for the animal.
- There is no special training or certification required.
- Exceptions to “No Pets” policies have been shown to be a reasonable accommodation.
- No limits on size or breed based on stereotypes or speculation.



22

ANALYZING TENANT'S CLAIM OR DEFENSE OF VIOLATION OF FHA

1. Determine the property at issue is covered by either the state or federal fair housing statutes.
2. Tenant must establish a prima facie claim or defense of failure to provide reasonable accommodations under the FHA. Elements:
 1. the tenant is disabled/handicapped within the meaning of the statute,
 2. the landlord knew or should reasonably be expected to know of the disability,
 3. the requested accommodation may be necessary to afford the disabled/handicapped person an equal opportunity to use and enjoy the dwelling,
 4. the accommodation is reasonable, and
 5. the landlord refused to make the requested accommodation.

From Dubois v. Association of Apartment Owners of 2987 Kalakaua, 453 F.3d 1175 (9th Cir. 2006).

23

1. TENANT IS DISABLED

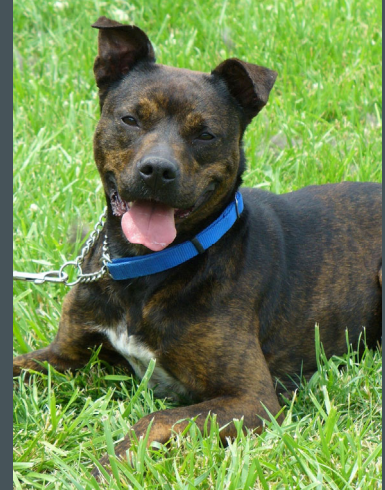
HOUSING AUTHORITY OF THE
CITY OF NEW LONDON V.
TARRANT



24

2. LANDLORD KNEW OR SHOULD HAVE KNOWN

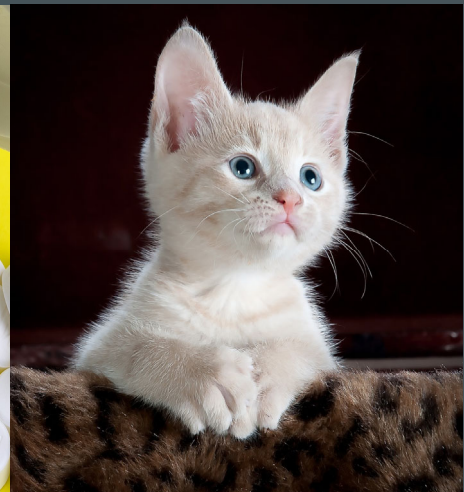
BUSH V. BROAD
MANAGEMENT GROUP



25

3. REQUESTED ACCOMMODATION IS NECESSARY

CROSSROADS APTS ASSOCS V.
LEBOO



26

4. ACCOMMODATION IS REASONABLE

WOODSIDE VILLAGE V.
HERTZMARK



27

5. LANDLORD REFUSED REQUESTED ACCOMMODATION

BRONK V. INEICHEN



28

LANDLORD'S REBUTTAL

1. Offering evidence that the tenant is not disabled, or that the requested animal does not meet a disability-related need, or
2. Demonstrating one of the following:
 - The specific animal requested poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level, or
 - The specific animal requested would cause substantial physical damages to the property, or
 - The requested accommodation would be an undue financial and/or administrative burden, or
 - The requested accommodation would fundamentally alter the nature of the provider's operations, or
 - The tenant failed to request an accommodation.



29

TENANT'S DEFENSE OF RETALIATORY EVICTION

- Protected activities within 12 months prior to filing
 - Making a complaint to a government agency, such as the NC Human Rights Commission
 - Attempting to exercise, secure or enforce his/her rights existing under the state or federal FHA
- Can apply in all actions for summary ejectment, not just breach of a lease, where on its face the eviction appears to be for a permissible reason (holding over, failure to pay), but is “substantially in response” to the tenant’s protected activities.

30

LANDLORD'S REBUTTAL TO RETALIATORY EVICTION

- Failure to pay rent/breach of lease is reason for eviction; or
- Tenant holding over after term expires; or
- Violation of RRRA caused by tenant or tenant's guest; or
- Demolition or major alteration of property to comply with code; or
- Good faith notice to quit prior to protected activities; or
- Landlord plans to use as own abode, demolish, renovate, or terminate as rental for at least 6 months.

31

HOUSE BILL 551, SENATE BILL 553

- Sets out conduct landlord cannot engage in
- Sets out the contents of a written verification from a health service professional for non-observable disabilities
- Creates a private action for the landlord to sue the tenant or health service professional for violations
- Requires the tenant to comply with terms of the rental agreement and to pay for damages caused by service/support animal
- Releases landlord from liability for injuries caused by service/support animal
- Excludes service/support animals from pet deposits

32

YOU GOAT IT!

- Federal and state fair housing laws allow a disabled person to have reasonable accommodations when necessary to afford such person the equal opportunity to use and enjoy a dwelling.
- In most cases, waiving a no-pet rule to allow a disabled resident to have an assistance animal is a reasonable accommodation.
- The need for the accommodation must arise out of the person's handicap and not be a function of personal preference or convenience.
- A landlord does not have to grant a reasonable accommodation request that would be an undue financial and/or administrative burden or would fundamentally alter the nature of the provider's operations.



33



34

TRANSIENT OCCUPANCY

- SL 2023-5-Ch. 42 does not apply to transient occupancies unless expressly provided in the agreement (GS 42-14.6)
- Transient occupancies=the rental of an accommodation by an inn, hotel, motel, recreational vehicle park, campground, or similar lodging to the same guest or occupant for fewer than 90 consecutive days (GS 72-1(c))



35

TRANSIENT OCCUPANT V. TENANT

- Is there a lease?
- Is the property the sole and permanent residence of the occupant?
- What is the length of the party's residence at the property?
- What is the layout of the property?
- Does the property have a hotel license and operate as such?
- Does the owner maintain control over the premises?
- Does the owner retain the room key?
- Does the owner provide maid service?
- Does the owner share facilities with the occupant?
- Does the owner repair and maintain the rooms?
- Does the owner or the occupant pay the utilities?

36

CHIEF MAGISTRATE'S AUTHORITY

- SL 2023-103, Section 10
- In addition to CDCJ delegating in writing authority to schedule magistrates, NCGS 7A-146 is amended to add:
 - Assign magistrate when exigent circumstances exist to temporary duty outside county of appointment
 - Designate magistrates to appoint counsel & accept waivers of counsel
 - Make preliminary investigations into written complaints against magistrates and make written report of preliminary findings
 - Not authority to make written findings of misconduct
 - Not authority to take disciplinary action



37

AMENDMENTS TO THE RETAIL INSTALLMENT SALES ACT (NCGS CH. 25A)

- SL 2023-60
- Changes the allowable interest rates for different amounts financed
- Changes the allowable interest rates based on age of motor vehicle
- Increases default fee to \$18.00



38

APPENDIX 2 NC SMALL CLAIMS LAW P. 96

TABLE 1. MAXIMUM ALLOWABLE INTEREST RATES ON LOANS IN NORTH CAROLINA

Type of Lender (Statute)	Amount Lent	Security	Interest Rate	Other Allowable Charges
Bank, credit union, savings and loans, and Individual (G.S. 241.1, -10, 10.1)	\$25,000 or less	Any property (but not home loan secured by first deed of trust)	Greater of 16% or noncompetitive rate for U.S. Treasury bills with six-month maturity plus 6%. Rate set monthly by N.C. Commissioner of Banks.	Late payment charge up to 4% of outstanding balance. Prepayment fee of 2% if prepaid within 3 years of 1 st payment for contract loan. Greater of ¼% of 1% of balance or \$50 for modification of loan.
Bank, credit union, savings and loans, and Individual (G.S. 24-11)	Extension of credit on open-end credit or revolving credit charges.	Any property if monthly periodic rate is 1¼% or less. No property if rate is over 1¼%.	1½% per month (18% per year) on unpaid balance	Annual charge of no more than \$24. Late payment fee of \$5 for unpaid balance less than \$100 and \$10 for balance of \$100 or more
Finance Company (G.S. 53-176, -177, -177.1, -180, -189, G.S. 25A-30)*	\$25,000 or less	Any personal property	Prejudgment: Loan of \$12,000 or less-33% per year on unpaid principal to \$4,000, 24% on unpaid principal between \$4,000 & \$8,000, and 18% per year on the remainder. Loan of more than \$12,000, 18% per year. Postjudgment: 8%	Processing fee not to exceed \$30 for loans up to \$3,000 and 1% for loans over \$3000 but max. of \$150. Late fee \$18. Deferral charge of 1½% of amount deferred. Fee for purchase of insurance policy in lieu of recording. Electronic transaction fees charged by non-affiliate third party.

39

Appendix 2 NC Small Claims Law p. 97

Table 2. Maximum Allowable Finance Charges on Sale of Consumer Goods or Services in North Carolina: G.S. 25A-14 THROUGH -15

Property Sold	Security Taken	Amount Financed	Allowable Finance Charge	Other Allowable Charges
Any personal property or services to be used for personal household, family, or agricultural purposes	Property or property previously sold by seller to buyer in which seller has existing security interest	Less than \$3,000 \$3,000 or more	24% \$5 minimum 18% \$5 minimum	Damage to property, credit, life, accident insurance charges if comply with truth-in-lending Official fees paid by the seller for determining the existence or for perfecting, releasing, satisfying a security interest, or in lieu thereof, premiums for insurance to protect seller if not more than official fees charged Default charge for installment past due at least 10 days \$18. Written, dated deferral agreement may provide for charge of 1½% of each installment for each month from date installment would have been due
Motor vehicle 1 to 3 model years old Motor vehicle 4 to 5 model years old Motor vehicle 6 model years old or older	Property sold or property previously sold by seller to buyer in which seller has existing security interest	\$75,000 or less	Higher of 20% or amount allowable under personal property category (above) Higher of 26% or amount allowable under personal property category (above) 30%	
Personal property to be affixed on real property Personal property on revolving charge account	Real property to which property sold is affixed Property sold or property previously sold by seller to buyer in which seller has existing security agreement for which case price is \$100 or more.	\$1,000 or more	16% 1.5% per month (18% per year)	Damage to property, credit, life, accident insurance charges if comply with truth-in-lending. Late payment fee of \$5 for unpaid balance less than \$100 and \$10 for balance of \$100 or more

40

**QUESTIONS,
COMMENTS,
CONCERNS?**

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- 919-962-2761

