

# Housing Codes for North Carolina As of July 2008

## **I. Introduction**

The State of North Carolina does not have a comprehensive property maintenance code. The state's Landlord and Tenant law (Chapter 42), however, imposes minimum generic maintenance obligations for rental property. Also, state law (Chapter 160A) empowers localities to adopt and enforce ordinances for dwellings that are "unfit for human habitation" due to conditions that render dwellings "unsafe" to residents.

In relevant part, Section II summarizes these laws, and Section III provides excerpts.

## **II. Summary of the Law**

### Landlord and Tenant Law

Article 5 of the North Carolina Landlord and Tenant law governs residential rental agreements. In short, the landlord must:

- Comply with applicable building and housing codes.
- "Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition."
- "Keep all common areas of the premises in safe condition."
- "Maintain in good and safe working order . . . all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities . . . supplied by the landlord."
- Provide and install smoke detectors that meet the specifications in the law – and promptly replace or repair the detectors upon notification from the tenant that repair or replacement is needed.

§ 42-42 (a).

The tenant must:

- Keep his/her premises "as clean and safe as the conditions of the premises permit and cause no unsafe or unsanitary conditions in the common areas."
- Dispose of "rubbish, garbage, and other waste in a clean and safe manner."
- Keep the plumbing fixtures in his/her dwelling "as clean as their condition permits."
- Not render the smoke detector inoperable; or destroy, deface, damage, or remove any part of the premises.
- Comply with all obligations imposed upon tenants by applicable building and housing codes.
- Be responsible for damage, defacement, or removal of property inside his/her dwelling that is not caused by ordinary wear and tear, natural forces, or the landlord.
- Notify the landlord, in writing, of the need for replacement or repair of a smoke detector.

§ 42-43(a).

### Local Housing Ordinances

North Carolina Chapter 160A empowers cities and counties to enact laws that provide for the repair, closing and demolition of dwellings found to be "unfit for human habitation" due to

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“dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions” that render the dwellings “unsafe or unsanitary, or dangerous or detrimental to the health, safety . . . [or] welfare of the residents.” § 160A-441.

Localities also may enact ordinances for the “repair, closing or demolition of any abandoned structure” deemed to be “a health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire hazard, [or] dangerous conditions constituting a threat to children.” § 160A-441.

Furthermore, this Chapter empowers localities to enact ordinances to require that every rental dwelling have a heating system so that at least one habitable room has a minimum temperature of 68 degrees Fahrenheit in winter. § 160A 443.1(a).

### **III. Relevant Excerpts of the Law**

#### **A. Landlord and Tenant Law<sup>1</sup>**

##### **Chapter 42**

##### **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.

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<sup>1</sup> The entire statute is available at

[http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByChapter/Chapter\\_42.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_42.html).

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(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 detectors, either battery-operated or electrical, having an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and install the smoke detectors 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 detectors 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 detector 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 detector 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.

(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.

(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.)

### **§ 42-42.1. Water Conservation.**

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- (a) For the purpose of encouraging water conservation, pursuant to a written rental agreement, a landlord may charge for the cost of providing water or sewer service to tenants who occupy the same contiguous premises pursuant to G.S. 62-110(g).
- (b) The landlord may not disconnect or terminate the tenant's water or sewer services due to the tenant's nonpayment of the amount due for water or sewer services. (2004-143, s. 4.)

### **§ 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 detector 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 detector. The landlord shall ensure that a smoke detector 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 detector 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.
- (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).)

### **§ 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 detector under the provisions of G.S. 42-42(a)(5) 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. The landlord may temporarily disconnect a smoke detector in a dwelling unit or common area for construction or rehabilitation activities when such activities are likely to activate the smoke detector or make it inactive.
- (a2) If a smoke detector 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 detector within 30 days of having received written notice from the landlord or any agent of State or local

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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 detector 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).)

### **B. Cities and Towns<sup>2</sup>**

#### **Chapter 160A.**

#### **Part 6. Minimum Housing Standards.**

##### **§ 160A-441. Exercise of police power authorized.**

It is hereby found and declared that the existence and occupation of dwellings in this State that are unfit for human habitation are inimical to the welfare and dangerous and injurious to the health, safety and morals of the people of this State, and that a public necessity exists for the repair, closing or demolition of such dwellings. Whenever any city or county of this State finds that there exists in the city or county dwellings that are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering the dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety, morals, or otherwise inimical to the welfare of the residents of the city or county, power is hereby conferred upon the city or county to exercise its police powers to repair, close or demolish the dwellings in the manner herein provided. No ordinance enacted by the governing body of a county pursuant to this Part shall be applicable within the corporate limits of any city unless the city council of the city has by resolution expressly given its approval thereto.

In addition to the exercise of police power authorized herein, any city may by ordinance provide for the repair, closing or demolition of any abandoned structure which the city council finds to be a health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary facilities. Such ordinance, if adopted, may provide for the repair, closing or demolition of such structure pursuant to the same provisions and procedures as are prescribed herein for the repair, closing or demolition of dwellings found to be unfit for human habitation. (1939, c. 287, s. 1; 1969, c. 913, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1975, c. 664, s. 15.)

##### **§ 160A-442. Definitions.**

The following terms shall have the meanings whenever used or referred to as indicated when used in this Part unless a different meaning clearly appears from the context:

- (1) "City" means any incorporated city or any county.
- (2) "Dwelling" means any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith, except that it does not include any manufactured home or mobile home, which is used solely for a seasonal vacation purpose.
- (3) "Governing body" means the council, board of commissioners, or other legislative body, charged with governing a city or county.
- (3a) "Manufactured home" or "mobile home" means a structure as defined in G.S. 143-145(7).
- (4) "Owner" means the holder of the title in fee simple and every mortgage of record.

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<sup>2</sup> The entire statute is available at

[http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByChapter/Chapter\\_160A.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_160A.html)

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- (5) "Parties in interest" means all individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof.
- (6) "Public authority" means any housing authority or any officer who is in charge of any department or branch of the government of the city, county, or State relating to health, fire, building regulations, or other activities concerning dwellings in the city.
- (7) "Public officer" means the officer or officers who are authorized by ordinances adopted hereunder to exercise the powers prescribed by the ordinances and by this Part. (1939, c. 287, s. 2; 1941, c. 140; 1953, c. 675, s. 29; 1961, c. 398, s. 1; 1969, c. 913, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1983, c. 401, ss. 1, 2.)

### **§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of public officer. (Omitted)**

#### **§ 160A-443.1. Heat source required.**

(a) A city shall, by ordinance, require that by January 1, 2000, every dwelling unit leased as rental property within the city shall have, at a minimum, a central or electric heating system or sufficient chimneys, flues, or gas vents, with heating appliances connected, so as to heat at least one habitable room, excluding the kitchen, to a minimum temperature of 68 degrees Fahrenheit measured three feet above the floor with an outside temperature of 20 degrees Fahrenheit.

(b) If a dwelling unit contains a heating system or heating appliances that meet the requirements of subsection (a) of this section, the owner of the dwelling unit shall not be required to install a new heating system or heating appliances, but the owner shall be required to maintain the existing heating system or heating appliances in a good and safe working condition. Otherwise, the owner of the dwelling unit shall install a heating system or heating appliances that meet the requirements of subsection (a) of this section and shall maintain the heating system or heating appliances in a good and safe working condition.

(c) Portable kerosene heaters are not acceptable as a permanent source of heat as required by subsection (a) of this section but may be used as a supplementary source in single family dwellings and duplex units. An owner who has complied with subsection (a) shall not be held in violation of this section where an occupant of a dwelling unit uses a kerosene heater as a primary source of heat.

(d) This section applies only to cities with a population of 200,000 or over, according to the most recent decennial federal census.

(e) Nothing in this section shall be construed as:

- (1) Diminishing the rights of or remedies available to any tenant under a lease agreement, statute, or at common law; or
- (2) Prohibiting a city from adopting an ordinance with more stringent heating requirements than provided for by this section. (1999-14, s. 1.)

#### **§ 160A-444. Standards.**

An ordinance adopted by a city under this Part shall provide that the public officer may determine that a dwelling is unfit for human habitation if he finds that conditions exist in the dwelling that render it dangerous or injurious to the health, safety or morals of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the city. Defective conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanness. The ordinances may provide additional standards to guide the public officers, or his agents, in determining the fitness of a dwelling for human habitation. (1939, c. 287, s. 4; 1971, c. 698, s. 1; 1973, c. 426, s. 60.)

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