

SECTION EIGHT HOUSING CHOICE VOUCHER PROGRAM

LANDLORD EDUCATION PACKET

For new and existing landlords, please make sure you read through the entire packet.



PENDER COUNTY HOUSING AUTHORITY

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INTRODUCTION:

The Section Eight Housing Choice Voucher Program is designed to assist families in securing decent, safe and sanitary housing in the private market. Qualified households receive rental assistance in the form of payments made directly to the landlord. Rental assistance is calculated based on household income and size under the rules established by the U. S. Department of Housing and Urban Development.

Owners and property managers of privately held units are encouraged to participate in the Section 8 Housing Choice Voucher Program as a way to provide decent, safe and affordable housing in their communities.

Acceptable Housing

Eligible housing types include single family houses, apartments, duplexes, and mobile homes located in Pender County. The housing unit must be in good repair without any defects that cause the unit to be unsafe or unsanitary. All systems and appliances must work as designed by the manufacturer.

Lease Terms

The initial term of your lease must be for one year. Before signing a lease, please review all of the terms, including the termination and lease renewal requirements with the resident. The lease should be detailed enough to cover all of the items of concern to the relationship. At the minimum, the lease must include the contract rent amount, effective date and expiration date of the lease, the names of the approved household members, specify the ownership of the appliances (refrigerator/stove) and specify who is responsible for paying for utilities. Additional information that landlords and tenants may wish to consider putting in the lease includes, but is not limited to, who changes smoke detector batteries and air filters, the late fee amount and its effective date, length of time visitors may stay, smoking in the unit, and pets.

Lease Forms

PCHA does not provide leases or require a specific lease format. Leases must cover those issues that concern the landlord and tenant relationship. Leases must also be compliant with North Carolina Law. Forms may be found on the internet, at office supply stores or may be created by legal counsel for you.

Move-outs

Under the program, residents and landlords are required to give a *minimum* of 30 days written notice to the other party and the Housing Authority prior to vacating a unit or terminating a lease. If the lease becomes a month-to-month lease after the initial one-year term, a 30 day written notice is still required. Residents must be in good standing with the landlord at the time you move. "Good standing" means that the unit is left in good condition and that they do not owe money for rent or damages to the landlord. However, it is the landlord's responsibility to ensure the resident is in good standing prior to the resident moving and report violations of lease terms in a timely manner.

Security Deposits

It is the landlord's responsibility to collect and manage security deposits. Security Deposits must be held in accordance with North Carolina law. While we do not give advice regarding collection of deposits, it is usual and customary for landlords to collect a deposit equal to the rent amount for one month. Deposits must be reconciled within 30 days of the tenant moving out of the unit and in accordance with North Carolina law.

Rent Payment

The resident must pay his/her portion of the rent you on the first day of each month in accordance with the terms of the lease. His/her portion should be made payable to you and it is advisable that you provide a receipt. **Additional side payments in excess of the amount stated in your lease and/or addendum are illegal and grounds for termination of assistance.** In addition, you may be considered in violation of Federal program guidelines and subject to legal action by the U. S. Department of Housing and Urban Development's (HUD) Office of Inspector General (OIG).

Rent Increases

Landlords wishing to obtain a rent increase must make the request in writing at least 60 days in advance of the annual renewal date. Requests will be reviewed to ensure that the increase is reasonable considering the market value of the unit. If the increase is not "rent reasonable" in comparison to the value of units of the same size and type in the market, then the request may be denied. If PCHA's budget has been reduced or limited due to Federal action, requests may also be denied. However, in the case of budget constraints, Landlords will be notified in writing of limitations on rent increases.

Utilities at Inspection

The Landlord is responsible for providing utilities at the inspection. The inspector must be able to check the water, sewage disposal, heating system, hot water heater and appliances. The only exception to the requirement that landlords provide the utilities for inspection is when the tenant is a *current* occupant of the unit and is requesting to "lease-in-place". Otherwise, the landlord must make arrangements for the utilities to be turned on in his/her name at least for the date of inspection.

Utilities during a Lease

All utilities (gas, electricity, water, etc.) must be operational AT ALL TIMES. A unit fails inspection and is considered sub-standard (not suitable for occupancy) when the utilities are disconnected. Sub-standard units are not eligible for rental assistance. A resident's failure to maintain utilities is grounds for termination of assistance. The HAP Contract may be terminated for any landlord who fails to provide utilities that he/she agreed to provide under the lease.

Familial Relationship between Tenants and Landlords

HUD does not allow participating families to rent from close relatives, except under specific circumstances relative to handicapped or elderly assisted families. Specifically, the landlord may not be the parent, child, grandparent, grandchild, sister or brother of **any** member of the assisted family. Landlords are required to disclose if there is a familial relationship to any member of the assisted family.

Appliances

All appliances supplied by the landlord are required to work as the appliance is supposed to work, even if the appliance is not required by HUD. The landlord is required to replace broken appliances, although the family may be held responsible for the cost of repair or replacement of appliances if (and only if) the family is responsible for the damage or breakdown of the appliances. Failure to maintain appliances may be grounds for termination of assistance.

Repairs

Residents are responsible for notifying landlords of any needed repairs. Emergency repairs, such as no heat in the winter, must be repaired within **24 hours** if at all possible. All other repairs must be completed within a reasonable period of time based on the type of repair and the availability of contractors (when a contractor is needed). While an initial report of needed repairs may be made by telephone to you, we recommend that residents follow up with the landlords in writing to ensure that requests are properly documented as required by North Carolina State Law. If you do not respond within reasonable timeframe, the resident must notify the Housing Authority.

Failure to make needed repairs or maintain assisted units is grounds for termination of the Housing Assistance Payment (HAP) Contract, which may also terminate your lease with the resident.

It is the family's responsibility to repair or pay for repairs for damages that are caused by the family, visitors or guests. Landlords may terminate the lease for tenant-caused damages in excess of normal wear and tear.

Move-outs

The Housing Authority is not required under HUD guidelines to conduct move-out inspections and does not conduct move-out inspections. However, a move-out inspection between yourself and your resident gives you the opportunity to discuss damages that you might consider to be beyond normal wear and tear. You should also discuss the security deposit and how much may be retained for damages. Failure to conduct a move-out inspection with the resident does not relieve you of responsibility to reconcile the Security Deposit in a timely manner.

Damage Claims

Families are responsible for family or visitor caused damages to a rental unit while it is in the family's possession. PCHA does not make any damage, unpaid rent, and/or vacancy loss payment to the landlord. Physical damage to a unit and unpaid rent, including losses to the landlord due to unanticipated vacancy of the unit (lease-breaking) may result in termination of rental assistance to the family provided the Landlord pursues legal action and notifies PCHA as required.

Requests for Tenancy Approval, Inspection and Signing Leasing Documents

The *Request for Tenancy Approval* (RFTA) is to be filled out by the landlord with the exception to the tenant portion located at the bottom right hand side of the form. Review the RFTA for completeness. The proposed resident or the landlord may deliver the completed RFTA to PCHA along with a copy of the proposed lease but PCHA does not approve leases. The lease should not be signed by the family or the landlord. However, all pertinent information must be provided including, but not limited to, the rent amount, the term, the utilities the resident must be separately from the rent, ownership of appliances, who will be approved to live in the unit and any concessions being given on the rent.

If the RFTA is filled out accurately and completely, the unit will be reviewed for affordability. PCHA will also review the rent for reasonableness to ensure that the rent being charged for the unit is reasonable based on the market and to ensure that it does not exceed rents paid for similar units in the area or by rent charged by the owner for comparable unassisted units in the same complex/neighborhood. If the unit is affordable and rent reasonable, the paperwork will be given to the Housing Inspector. He/she will schedule the HQS Inspection based on the date the unit will be move-in ready. The inspector will schedule the inspection with the landlord but will also advise the family of the date and time. Both the proposed tenant and the Landlord should be present at the inspection, if possible.

The unit **MUST** pass an initial inspection before the family may sign a lease and before rental assistance may begin. If the resident must provide the stove and refrigerator, these appliances must also pass the inspection prior the inspector approving the unit. Unless we are notified otherwise prior to inspection, the landlord is expected to provide all basic appliances.

All utilities must be on in the unit in order for the inspector to check the heating system, hot water heater and the appliances. The Landlord is responsible for utilities providing utilities at the inspection, unless the tenant is a *current* occupant of the unit and is requesting to “lease-in-place”.

If a family moves into the unit prior to passing inspection, the family will be responsible for the entire rent until such time as the unit passes inspection and contracts for assistance are effective. PCHA will not pay assistance on a unit for any dates prior to the date the unit passes inspection or the date the family takes possession, whichever is later.

HUD Tenancy Addendum to the Lease

The HUD Tenancy Addendum to the Lease must be attached to all copies of the lease. A copy of the Addendum is included with this packet. You may re-type it to include it in the body of your lease or you may include a reference in the lease incorporating the Lease Addendum and attach a copy to the Lease. It is also included as Section C of the HAP Contract. Both tenants and landlords are held responsible for complying with the Addendum.

HQS Inspection Tools

With this packet, you will find a checklist for Housing Quality Standards. The checklist can be a valuable tool in determining if your unit will likely pass basic inspection guidelines. You should use the checklist to determine what items need to be repaired before the RFTA is complete and an inspection date is schedule.

After the unit passes inspection, you and the resident may sign the lease as soon as is reasonable. The terms of the lease and the Housing Assistance Payment (HAP) Contract, which is the contract between Landlords and PCHA, must be the same. Payment will begin based on the date the unit passes inspection or the date of occupancy, whichever is **later**.

The terms of the lease and the HAP Contract must agree with the later of the two dates and payment will be issued in accordance with PCHA policies. Once the lease is signed, it is a binding for one year. Mutual recessions of the lease in the first year must be approved by PCHA.

Unauthorized Occupants

Only those people approved by both the Housing Authority and the landlord as occupants on the lease and HAP Contract are allowed to live in the unit.

Sub-leasing or Sub-letting Units

Residents are not permitted to sub-lease or sub-let any portion of an assisted unit.

Occupancy of the Assisted Unit

Residents must occupy the assisted unit as their **ONLY** residence.

Regular Inspections

PCHA recommends that Landlords perform regular inspections to protect their investment and ensure tenant compliance with the lease. Do not rely solely on the annual HQS Inspection, which only certifies whether or not the unit meets HUD's minimum standards. These standards may not be enough to ensure long-term protection of your investment property.

Side Agreements or Additional Payments

You may not make side agreements, agree to accept “side” payments, charge other fees, or accept additional rent payments over/above the rent amount stated in the RFTA, the Lease and the HAP Contract. Any payments between tenants and landlord in addition to the rent must be approved by the Housing Authority. Such payments will be considered a part of the rent for the unit and will affect the affordability of the unit. This includes additional charges for lawn maintenance, parking or other charges not included in the rent, whether it is a clause in the lease or in a lease addendum.

Failure to by Family to pay the Tenant Rent Portion

Families must pay their portion of the rent to you in accordance with the terms of the lease. Failure of the landlord to require families to pay their portion, no matter the amount, may be grounds for termination of the HAP Contract and rental assistance payments. It is the Landlord’s responsibility to pursue collection of the rent.

Transferring Residents

You may not transfer a resident from one unit or property to another without PCHA approval. Each time a resident moves, a “new move-in” occurs. The new unit must be approved for affordability and inspected prior to a move. If you move a resident without coordinating with PCHA, you may cause the resident to lose rental assistance.

Bribing, Bullying or Threatening Housing Authority Staff or Associated Personnel

Attempts to bribe, bully or making threats against Housing Authority staff, contractors, property managers or other personnel associated with the Housing Authority, including swearing, yelling and threatening physical harm, are grounds for termination of participation.

PCHA Subsidy Standards: *This is the guideline PCHA uses when issuing vouchers and is not binding on landlords.*

Voucher Size	Minimum # in Household	Maximum # in Household	Maximum per HQS
0	1	1	2
1	1	2	4
2	2	4	6
3	4	6	8
4	6	8	10
5	8	10	12

**Notice to Owners/Managers:
Violations of the Section 8 Housing Choice Voucher Program Requirements**

The U. S. Department of Housing and Urban Development (HUD) has made it known that it has serious concerns about violations of the Housing Choice Voucher Program requirements. The HUD Office of Inspector General (OIG) has identified cases of fraud by Public Housing Authority, like PCHA, and their employees, owners/managers, landlords and residents participating in the program.

In order for PCHA to provide rental assistance to as many needy families as possible, all participants in this program must use the government funds responsibly and follow HUD and PCHA policy requirements. Incidents of fraud, willful misrepresentation or intent to deceive with regard to the Section 8 program are criminal acts. If you are suspected of committing fraudulent actions, we are required to refer the matter to the OIG for action. This could lead to an investigation of the allegation and could result in you being accused of a Federal crime. Your participation could also be terminated.

Examples of fraud include by are not limited to:

- Requiring or agreeing to accept “side” payments in excess of the family’s share of rent per the HAP Contract and lease.
- Collecting assistance payments for units not occupied by Section 8 residents.
- Bribing PHA employees to certify sub-standard units and other violations of HQS that involve misrepresentation or deceit.

Additionally, owners are required to:

- Notify PCHA when people other than those listed on the Lease and HAP Contract are living in the unit.
- Notify PCHA in advance if the resident plans to move into another unit owned by you.
- Notify the PCHA if the resident is damaging the rental unit or the family has poor housekeeping habits and does not maintain the unit as agreed.

Landlords are urged to report known or suspected violations of the program guidelines. Failure to report known non-compliance may result in action against the landlord. We will take action as warranted to ensure fraud is prevented or prosecuted when found.

Section 8 Housing Choice Voucher Program

Housing Quality Standards (HQS) Inspection Checklist



SECTION 8 PROGRAM RESIDENT AND OWNER'S HQS GUIDE

THE HOUSING QUALITY STANDARDS INSPECTION

The unit must pass a housing quality standard inspection. The inspection will be conducted within 15 days after receipt of the completed Request for Tenancy Approval (RFTA) provided the unit is affordable for the family. A HQS inspector will contact the owner by phone to schedule the inspection.

All utilities must be connected before an inspection may be conducted.

RENT REASONABLENESS

The requested rent amount must be reasonable as compared to similar unassisted units. The Housing Authority must approve all rents requested.

ANNUAL HOUSING QUALITY STANDARDS INSPECTIONS and COMPLAINT INSPECTIONS

The Housing Authority is required to inspect the unit annually. We may also perform a complaint inspection if it is determined that an owner is not maintaining the unit. Any deficiencies will be noted and a notice mailed indicating a repair deadline. The owner or property manager is required to repair items within 30 days or 24 hours for life threatening deficiencies. The family is responsible for any tenant caused damages beyond normal wear and tear.

HOUSING QUALITY STANDARDS INSPECTION

OVERVIEW

Before the Housing Authority can make payments on behalf of a tenant family, the unit must meet HUD's minimum Housing Quality Standards (HQS). These standards have been implemented by HUD nationwide to ensure that all assisted units meet minimum health and safety standards. **The Housing Authority will inspect the unit for HQS initially and at least annually.**

In order to ensure the unit meets Housing Quality Standards, review the requirements and correct any HQS violations before the inspection. At the time of the inspection, the unit should be "move-in" ready.

Required Repairs

If the unit fails the initial inspection or annual inspection, an inspection report with the failed items indicated will be mailed to the owner. When the repairs are complete, owners must contact the Housing Authority to request a re-inspection.

Initial housing assistance payments cannot be made until the unit passes an inspection. **Repairs for the annual inspection must be made within 30 days or 24 hours for life threatening emergencies.** For annual inspections, if repairs are not made by the stated deadline, housing assistance payments may be abated.

Common HQS Failed Items

- Non functional smoke detectors
- Missing or cracked electrical outlet cover plates
- Railings not present where required
- Peeling exterior and interior paint
- Trip hazards caused by installed floor coverings (carpets/vinyl)
- Cracked or broken window panes
- Inoperable burners on stoves or inoperable range hoods
- Missing burner control knobs
- Inoperable bathroom fan/no ventilation
- Leaking faucets or plumbing
- No temperature/pressure relief valve on water heaters

HQS CHECKLIST

The following is a listing of items inspected to meet Housing Quality Standards:

Bathroom

- The bathroom must be located in a separate room and have a flush toilet.
- The unit must have a fixed basin with a sink trap and hot and cold running water.
- The unit must have a shower or bathtub with hot and cold running water.
- The toilet facilities must utilize an approvable public or private disposal system, including a locally approvable septic system.

Kitchen

- The unit must have a stove or range for cooking (exceptions must be approved by PCHA) and refrigerator of appropriate size for the unit (i.e., family) in proper operating condition. Stoves, ovens, and ranges must have all control knobs and handles. Gas stove burners must light by pilot jets without the use of incendiary devices (i.e., matches, lighter, etc.).
- The unit must have a kitchen sink in proper operating condition with a sink trap and hot and cold running water, which drains into an approvable public or private wastewater system.
- The unit must provide space for the storage, preparation, and serving of food.
- There must be facilities and services for the sanitary disposal of food waste and refuse, including temporary storage facilities where necessary (i.e., garbage containers).

Space and Security

- All units must have a minimum of a living room, kitchen area, and bathroom.
- The unit must contain at least one sleeping or living/sleeping room for each two persons.
- The unit's windows, which are accessible from the outside, such as basement, first-floor, and fire escape windows, must be lockable (e.g., window units with sash pins or sash locks, and combination windows with latches).
- Vertically opening windows must stay up and open without the use of props.
- Windows designed to open should be in working condition.
- The unit's exterior doors (i.e., those that allow access to or from the unit) must lock properly.

Thermal Environment (Heating and Cooling System)

- The unit must contain a safe heating system (and safe cooling system, where present), which is in proper operating condition and can provide adequate heat (and cooling, if applicable), either directly or indirectly, to each room used for living in order to assure a healthy living environment appropriate to the climate.
- The unit must **not** contain any unvented room heaters that burn gas, oil, or kerosene. A working radiator would be acceptable.

Illumination and Electricity

- There must be at least one window in the living room and in each sleeping room.
- The kitchen area and the bathroom must have a permanent ceiling or wall-type light fixture in working condition. The kitchen area must also have at least one electrical outlet in operating condition.
- The living room and each bedroom must have at least two electrical outlets in operating condition. Permanently installed overhead or wall-mounted light fixtures may count as one of the required electrical outlets.
- All other rooms used for living require a means of natural or artificial illumination such as a light fixture, a wall outlet to serve a lamp, a window in the room, or adequate light from an adjacent room.
- Each electrical outlet must be permanently installed in the baseboard, wall or floor.
- Table or floor lamps, ceiling lamps plugged into a socket, or an extension cord plugged into another plug cannot be counted as an outlet for HQS purposes.
- Electrical hazards of any kind, either inside or outside the unit, would receive a fail rating.

Structure and Materials

- Interior ceilings, walls and floors must not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling, missing parts, or other serious damage.

- The floors must also not have any major movement under walking stress or tripping hazards presented by the permanent floor coverings.
- The roof must be structurally sound and weather tight.
- The exterior wall structure and surfaces must not have any serious defects such as serious leaning, buckling, sagging, large holes, unfastened and falling components, or defects that would result in air infiltration or vermin infestation.
- The condition and equipment of interior and exterior stairways, halls, porches, walkways, etc. must not present a danger of tripping and falling. Examples include, but are not limited to, broken or missing steps and loose boards.
- Elevators must be working, safe, and compliant with locally enforced codes.
- Manufactured homes must be securely anchored by tie down devices that distribute and transfer the loads imposed by the unit to appropriate ground anchors so as to resist wind overturning and sliding.

Interior Air Quality

- The unit must be free from dangerous levels of air pollution from carbon monoxide, sewer gas, fuel gas, dust and other harmful pollutants.
- The unit must have adequate air circulation.
- Bathrooms must have a window that opens properly or a permanently installed exhaust fan.
- Any room used for sleeping must have at least one window that opens properly, if the window was designed to open.

Water Supply

An approvable public or private water supply must serve the unit that is sanitary and free from contamination.

Lead-Based Paint

A dwelling unit constructed before 1978 that is occupied by a family that includes a child under the age of six years must include a visual inspection for defective paint surfaces. Defective paint surface is defined as a surface on which the paint is cracking, scaling, chipping, peeling or loose. If defective paint surfaces are found, such surfaces must be treated.

Access

- The unit must have direct access for the tenant to enter and exit, without the unauthorized use of other private properties.
- The building must provide an alternate means of exit in case of fire (such as fire stairs or exit through windows, with the use of a ladder if windows are above the second floor).
- Entry/exits must not be “blocked” by debris, stored items, non-working locks or doors that have been nailed shut or otherwise obstructed.

Site and Neighborhood

The site and neighborhood must be reasonably free of serious conditions that would endanger the health and safety of residents.

Infestation

The unit and its equipment must be free of infestation from insects/bugs, vermin and rodents.

Smoke Detectors

The unit must have at least one battery operated or hardwired smoke detector that is in proper operating condition on each level of the unit, including basements but excluding crawl spaces and unfinished attics.

Utilities

All utilities (water, electricity, and gas where applicable) must be on before the inspection will be scheduled. All gas appliances must have pilots lit before an inspection is scheduled.

Occupancy

Unit to be inspected must be either vacant or occupied by the Section 8 client applying for that unit.

Doors

- Interior:
 - Doors must be securely mounted. All required hardware and trim (locks, molding, etc.) must be present and in proper working order. Locking hardware must correctly engage strike plates.
 - Door surfaces must be in good repair, free of holes and not showing signs of delaminating.
 - The doors must operate smoothly without binding on frame or floor.

- Exterior:
 - Hinged doors must be securely mounted. All necessary hardware and trim (locks, molding, etc.) must be present and in proper working order. Locking hardware must properly engage strike plates.
 - Door surfaces must be in good repair. Door surface damages that allow thermal transfer (air leakage) are not allowed.
 - Keyed, single-cylinder, dead bolt locks, and “keyless locks” are necessary for the front entry doors. All other doors entering the living quarters, including doors leading to an enclosed garage, must have keyless lock. If there is limited or no visibility at the front entry way, peephole may be required for safety purposes. If glass panes are mounted into the door surface or along the side of the door that allow views to the outside or if there is a window within reasonable proximity to the front entry door that allows adequate views, then a peephole is not needed.

- The doors must operate smoothly without binding on the doorframe or floor. Hinged doors must not allow thermal transfer because of faulty/missing seals or misalignment to the doorframe.
- Two types of keyless locks are acceptable. One is the keyless deadbolt. The other is called a “C” bolt or anchor bolt.
- Sliding glass doors must have two means of security. A combination of two of the following is sufficient; the main latch, a pin that secures the sliding panel to the fixed panel, and/or a “Charlie Bar” which must be permanently mounted. Both the pin and the bar should not be mounted more than 48” from the floor. The door must function properly. Excessive force must not be required to open and/or close the sliding panel.
- Siding doors must not allow thermal transfer because of faulty/missing seals or misalignment to the doorframe.

Windows

- If windows are designed to open, they must open and remain open without props. Window locks must be present and function properly.
- Security bars are allowed. However, if they are installed on bedroom windows and/or exit doors they must be designed to allow emergency egress.

Electrical Outlets, Switches, Fixtures, Stairs and Bathrooms

- Electrical outlets must be securely mounted, function properly, and have cover plates.
- Electrical switches must be securely mounted, function properly, and have cover plates. This includes three-way switch systems designed for hallway and stairwell lighting.
- Both inside and outside light fixtures must be securely mounted and function properly. “Hanging” lights must be supported by the chain or other hardware and not by the electrical wiring.
- Circuit Breaker/Fuse Boxes, both interior and exterior, must have permanent covers preventing contact with bare wiring.
- Stairs: Handrails must be present at stair locations that have four (4) or more risers. Missing/damaged parts are not acceptable. Loose, broken, and/or missing treads are not allowed.
- All bathrooms must have a vent fan or window.

The information on this checklist provides an idea of basic HQS requirements. Other elements may be considered depending upon the type and location the rental unit.

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) _____ Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):

(i) _____ Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) _____ Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

(c) _____ Lessee has received copies of all information listed above.

(d) _____ Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

Agent's Acknowledgment (initial)

(e) _____ Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852(d) and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____ Lessor	_____ Date	_____ Lessor	_____ Date
_____ Lessee	_____ Date	_____ Lessee	_____ Date
_____ Agent	_____ Date	_____ Agent	_____ Date



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ATTACHMENT TO LEASE HUD TENANCY ADDENDUM 7420.8

TENANT/APPLICANT NAME: _____

LANDLORD NAME: _____

EFFECTIVE DATE OF LEASE: _____

BY SIGNING THIS AGREEMENT BOTH PARTIES NAMED ABOVE AGREE THAT THE *HUD FORM 7420.8, TENANCY ADDENDUM TO THE LEASE*, IS INCORPORATED AS AN ADDENDUM TO THE LEASE BETWEEN THE PARTIES AND THEY AGREE TO COMPLY WITH THE TERMS OF THE ADDENDUM.

I certify my acceptance and understanding by signing below:

Tenant Signature

Date

Tenant Signature

Date

Landlord Signature

Date



TENANCY ADDENDUM
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program (To
be attached to Tenant Lease)

**U.S. Department of Housing
and Urban Development**
Office of Public and Indian Housing
OMB Approval No. 2577-0169
Exp. 04/30/2014

1. Section 8 Voucher Program

- a. The owner is leasing the contract unit to the tenant for occupancy by the tenant's family with assistance for a tenancy under the Section 8 housing choice voucher program (voucher program) of the United States Department of Housing and Urban Development (HUD).
- b. The owner has entered into a Housing Assistance Payments Contract (HAP contract) with the PHA under the voucher program. Under the HAP contract, the PHA will make housing assistance payments to the owner to assist the tenant in leasing the unit from the owner.

2. Lease

- a. The owner has given the PHA a copy of the lease, including any revisions agreed by the owner and the tenant. The owner certifies that the terms of the lease are in accordance with all provisions of the HAP contract and that the lease includes the tenancy addendum.
- b. The tenant shall have the right to enforce the tenancy addendum against the owner. If there is any conflict between the tenancy addendum and any other provisions of the lease, the language of the tenancy addendum shall control.

3. Use of Contract Unit

- a. During the lease term, the family will reside in the contract unit with assistance under the voucher program.
- b. The composition of the household must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. Other persons may not be added to the household without prior written approval of the owner and the PHA.
- c. The contract unit may only be used for residence by the PHA-approved household members. The unit must be the family's only residence. Members of the household may engage in legal profit making activities incidental to primary use of the unit for residence by members of the family.
- d. The tenant may not sublease or let the unit.
- e. The tenant may not assign the lease or transfer the unit.

4. Rent to Owner

- a. The initial rent to owner may not exceed the amount approved by the PHA in accordance with HUD requirements.
- b. Changes in the rent to owner shall be determined by the provisions of the lease. However, the owner may not raise the rent during the initial term of the lease.
- c. During the term of the lease (including the initial term of the lease and any extension term), the rent to owner may at no time exceed:

- (1) The reasonable rent for the unit as most recently determined or redetermined by the PHA in accordance with HUD requirements, or
- (2) Rent charged by the owner for comparable unassisted units in the premises.

5. Family Payment to Owner

- a. The family is responsible for paying the owner any portion of the rent to owner that is not covered by the PHA housing assistance payment.
- b. Each month, the PHA will make a housing assistance payment to the owner on behalf of the family in accordance with the HAP contract. The amount of the monthly housing assistance payment will be determined by the PHA in accordance with HUD requirements for a tenancy under the Section 8 voucher program.
- c. The monthly housing assistance payment shall be credited against the monthly rent to owner for the contract unit.
- d. The tenant is not responsible for paying the portion of rent to owner covered by the PHA housing assistance payment under the HAP contract between the owner and the PHA. A PHA failure to pay the housing assistance payment to the owner is not a violation of the lease. The owner may not terminate the tenancy for nonpayment of the PHA housing assistance payment.
- e. The owner may not charge or accept, from the family or from any other source, any payment for rent of the unit in addition to the rent to owner. Rent to owner includes all housing services, maintenance, utilities and appliances to be provided and paid by the owner in accordance with the lease.
- f. The owner must immediately return any excess rent payment to the tenant.

6. Other Fees and Charges

- a. Rent to owner does not include cost of any meals or supportive services or furniture which may be provided by the owner.
- b. The owner may not require the tenant or family members to pay charges for any meals or supportive services or furniture which may be provided by the owner. Nonpayment of any such charges is not grounds for termination of tenancy.
- c. The owner may not charge the tenant extra amounts for items customarily included in rent to owner in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

7. Maintenance, Utilities, and Other Services

- a. **Maintenance**
 - (1) The owner must maintain the unit and premises in accordance with the HQS.
 - (2) Maintenance and replacement (including

redecorating) must be in accordance with the

standard practice for the building concerned as established by the owner.

b **Utilities and appliances**

- (1) The owner must provide all utilities needed to comply with the HQS.
- (2) The owner is not responsible for a breach of the HQS caused by the tenant's failure to:
 - (a) Pay for any utilities that are to be paid by the tenant.
 - (b) Provide and maintain any appliances that are to be provided by the tenant.

c **Family damage.** The owner is not responsible for a breach of the HQS because of damages beyond normal wear and tear caused by any member of the household or by a guest.

d **Housing services.** The owner must provide all housing services as agreed to in the lease.

is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(b) Violating a condition of probation or parole under Federal or State law.

(3) The owner may terminate the tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

(4) The owner may terminate the tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety or right to peaceful enjoyment of the premises by other residents.

d **Other good cause for termination of tenancy**

(1) During the initial lease term, other good cause for termination of tenancy must be something the family did or failed to do.

(2) During the initial lease term or during any extension term, other good cause may include:

- (a) Disturbance of neighbors,
- (b) Destruction of property, or
- (c) Living or housekeeping habits that cause damage to the unit or premises.

(3) After the initial lease term, such good cause may include:

- (a) The tenant's failure to accept the owner's offer of a new lease or revision;
- (b) The owner's desire to use the unit for personal or family use or for a purpose other than use as a residential rental unit; or
- (c) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, the owner's desire to rent the unit for a higher rent).

(4) The examples of other good cause in this paragraph do not preempt any State or local laws to the contrary.

(5) In the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease, requiring the tenant to vacate the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner: (a) will occupy the unit as a primary residence; and (b) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice. This provision shall not affect any State or local law that provides for longer time periods or addition protections for tenants. **This provision will sunset on December 31, 2012 unless extended by law.**

8. Termination of Tenancy by Owner

a **Requirements.** The owner may only terminate the tenancy in accordance with the lease and HUD requirements.

b **Grounds.** During the term of the lease (the initial term of the lease or any extension term), the owner may only terminate the tenancy because of:

- (1) Serious or repeated violation of the lease;
- (2) Violation of Federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the unit and the premises;
- (3) Criminal activity or alcohol abuse (as provided in paragraph c); or
- (4) Other good cause (as provided in paragraph d).

c **Criminal activity or alcohol abuse.**

(1) The owner may terminate the tenancy during the term of the lease if any member of the household, a guest or another person under a resident's control commits any of the following types of criminal activity:

- (a) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);
- (b) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
- (c) Any violent criminal activity on or near the premises; or
- (d) Any drug-related criminal activity on or near the premises.

(2) The owner may terminate the tenancy during the term of the lease if any member of the household is:

- (a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that

e. Protections for Victims of Abuse.

- (1) An incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as serious or repeated violations of the lease or other “good cause” for termination of the assistance, tenancy, or occupancy rights of such a victim.
- (2) Criminal activity directly relating to abuse, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control, shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant’s family is the victim or threatened victim of domestic violence, dating violence, or stalking.
- (3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, a PHA, owner or manager may “bifurcate” a lease, or otherwise remove a household member from a lease, without regard to whether a household member is a signatory to the lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others. This action may be taken without evicting, removing, terminating assistance to, or otherwise penalizing the victim of the violence who is also a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the housing choice voucher program.
- (4) Nothing in this section may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up.
- (5) Nothing in this section limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant’s household, provided that the owner, manager, or public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate.
- (6) Nothing in this section may be construed to limit the authority of an owner or manager to evict, or the public housing agency to terminate assistance, to any tenant if the owner, manager, or public

housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the tenant is not evicted or terminated from assistance.

- (7) Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

f. Eviction by court action. The owner may only evict the tenant by a court action.

g. Owner notice of grounds

- (1) At or before the beginning of a court action to evict the tenant, the owner must give the tenant a notice that specifies the grounds for termination of tenancy. The notice may be included in or combined with any owner eviction notice.
- (2) The owner must give the PHA a copy of any owner eviction notice at the same time the owner notifies the tenant.
- (3) Eviction notice means a notice to vacate, or a complaint or other initial pleading used to begin an eviction action under State or local law.

9. Lease: Relation to HAP Contract

If the HAP contract terminates for any reason, the lease terminates automatically.

10. PHA Termination of Assistance

The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the lease terminates automatically.

11. Family Move Out

The tenant must notify the PHA and the owner before the family moves out of the unit.

12. Security Deposit

- a. The owner may collect a security deposit from the tenant. (However, the PHA may prohibit the owner from collecting a security deposit in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. Any such PHA-required restriction must be specified in the HAP contract.)
- b. When the family moves out of the contract unit, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, as reimbursement for any unpaid rent payable by the tenant, any damages to the unit or any other amounts that the tenant owes under the lease.
- c. The owner must give the tenant a list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must promptly refund the full amount of the unused balance to the tenant.

- d. If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may collect the balance from the tenant.

13. Prohibition of Discrimination

In accordance with applicable equal opportunity statutes, Executive Orders, and regulations, the owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status or disability in connection with the lease.

14. Conflict with Other Provisions of Lease

- a. The terms of the tenancy addendum are prescribed by HUD in accordance with Federal law and regulation, as a condition for Federal assistance to the tenant and tenant's family under the Section 8 voucher program.
- b. In case of any conflict between the provisions of the tenancy addendum as required by HUD, and any other provisions of the lease or any other agreement between the owner and the tenant, the requirements of the HUD-required tenancy addendum shall control.

15. Changes in Lease or Rent

- a. The tenant and the owner may not make any change in the tenancy addendum. However, if the tenant and the owner agree to any other changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must be in accordance with the requirements of the tenancy addendum.
- b. In the following cases, tenant-based assistance shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner:
 - (1) If there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;
 - (2) If there are any changes in lease provisions governing the term of the lease;
 - (3) If the family moves to a new unit, even if the unit is in the same building or complex.
- c. PHA approval of the tenancy, and execution of a new HAP contract, are not required for agreed changes in the lease other than as specified in paragraph b.
- d. The owner must notify the PHA of any changes in the amount of the rent to owner at least sixty days before any such changes go into effect, and the amount of the rent to owner following any such agreed change may not exceed the reasonable rent for the unit as most recently determined or redetermined by the PHA in accordance with HUD requirements.

16. Notices

Any notice under the lease by the tenant to the owner or by the owner to the tenant must be in writing.

17. Definitions

Contract unit. The housing unit rented by the tenant with assistance under the program.

Family. The persons who may reside in the unit with assistance under the program.

HAP contract. The housing assistance payments contract between the PHA and the owner. The PHA pays housing assistance payments to the owner in accordance with the HAP contract.

Household. The persons who may reside in the contract unit. The household consists of the family and any PHA-approved live-in aide. (A live-in aide is a person who resides in the unit to provide necessary supportive services for a member of the family who is a person with disabilities.)

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the Section 8 tenant-based programs.

HUD. The U.S. Department of Housing and Urban Development.
HUD requirements. HUD requirements for the Section 8 program. HUD requirements are issued by HUD headquarters, as regulations, Federal Register notices or other binding program directives.

Lease. The written agreement between the owner and the tenant for the lease of the contract unit to the tenant. The lease includes the tenancy addendum prescribed by HUD.

PHA. Public Housing Agency.

Premises. The building or complex in which the contract unit is located, including common areas and grounds.

Program. The Section 8 housing choice voucher program.

Rent to owner. The total monthly rent payable to the owner for the contract unit. The rent to owner is the sum of the portion of rent payable by the tenant plus the PHA housing assistance payment to the owner.

Section 8. Section 8 of the United States Housing Act of 1937 (42 United States Code 1437f).

Tenant. The family member (or members) who leases the unit from the owner.

Voucher program. The Section 8 housing choice voucher program. Under this program, HUD provides funds to a PHA for rent subsidy on behalf of eligible families. The tenancy under the lease will be assisted with rent subsidy for a tenancy under the voucher program.



Roy Cooper North Carolina Attorney General

LANDLORDS' MAINTENANCE AND REPAIR DUTIES: YOUR RIGHTS AS A RESIDENTIAL TENANT IN NORTH CAROLINA

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LANDLORD AND TENANT: REPAIRS

INTRODUCTION

Each year the Office of the Attorney General receives hundreds of complaints and inquiries from tenants regarding disputes they are having with their landlords. The laws governing the relationship between a landlord and a tenant are complex and come from several sources. Those sources include the law of contracts (leases are a type of contract), the law of negligence, the North Carolina General Statutes, local health, safety and building codes, federal laws and regulations governing subsidized rental housing, and the Constitutions of the United States and the State of North Carolina.

What follows is not a complete discussion of North Carolina landlord-tenant law. Instead, it is a discussion of the problems involving the landlord's failure to maintain or repair the rental property. Also available from the Office of the Attorney General, Consumer Protection Section, is another information booklet similar to this one discussing security deposit disputes between landlords and tenants.

It is hoped that the information provided here will be helpful to you. It can be surprising how just a little bit of knowledge of your rights as a tenant can help you resolve disputes with your landlord, and maybe even avoid them altogether.

PART ONE: THE RESIDENTIAL RENTAL AGREEMENTS ACT. Up until 1977 there was very little in the law of this state requiring landlords to make repairs to rental premises. Legal scholars say that the laws governing leases up until 1977 were based upon North Carolina's history as an agricultural state. When people entered into leases for land a hundred years ago, the most important thing was usually the value of the farmland itself, not the condition and up-keep of the farmhouse or other buildings on the land. By 1977 the economy of North Carolina was changing. Most leases by that time dealt with houses or mobile homes or apartments, and the condition and use of the living quarters had become primary concerns of tenants signing such leases.

The North Carolina Residential Rental Agreements Act of 1977 was passed by the General Assembly because of these changes in our economy. The Act defines the duties of both the landlord and the tenant with respect to the maintenance and repair of the premises. For the landlord, at least, many of these legal duties never existed before.

PART TWO: DUTIES OF THE TENANT. The tenant must pay all rent legally due under the lease and perform certain day-to-day maintenance duties in order to enforce the landlord's duties under the Residential Rental Agreements Act. The tenant's duties under the Act are as follows:

North Carolina General Statute 42-43(a)

- (1) Keep that part of the premises which he 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 which he 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 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 his exclusive control unless said damage, defacement or removal was due to ordinary wear and tear, acts of the landlord or his 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.

PART THREE: DUTIES OF THE LANDLORD. The landlord's maintenance and repair duties under the Residential Rental Agreements Act are as follows:

North Carolina General Statute 42-42(a)

- (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 premise in safe condition; and
- (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 him 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 designed 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.

PART FOUR: DUTIES OF THE LANDLORD CANNOT BE WAIVED. North Carolina General Statute 42-42(b) states that a landlord cannot excuse himself from these duties through a special clause inserted into the lease. As discussed below, many leases contain such clauses, and tenants should not be fooled into thinking that such clauses are binding.

A landlord and a tenant can enter into an agreement separate from the lease through which the tenant will perform the landlord's maintenance duties, but only if the tenant is to receive reasonable and just compensation for it. Such would be the case when a carpenter, plumber or painter rents from the landlord, and the landlord wants to hire that tenant to help with the upkeep and repair of the rental property.

PART FIVE: WRITTEN NOTICE TO THE LANDLORD. The landlord's duty to repair promptly all plumbing, heating, air conditioning, and other appliances and facilities does not begin until the tenant has given written notice to the landlord of needed repairs. The written notice requirement does not apply in emergency situations, such as loss of heat in mid-winter or sudden leaks in the plumbing that are going to cause damage to the premises or injury to the tenant if a repair service is not called right away.

As a practical matter, the best thing to do when a refrigerator, oven, or air conditioner breaks down is to call or visit the landlord immediately to report the problem. Follow up the conversation with a note or letter to the landlord which mentions the earlier oral request for

repairs. For instance, “Dear Landlord: This is just a reminder of the request I made by phone this morning for repairs to the furnace at 344 Center Drive.” Sign and date the note and **keep a copy**. If you have to hire a repair person yourself because the landlord will not do anything, a copy of the written notice will be very helpful if you go to Small Claims Court seeking reimbursement for the repair bill you paid.

PART SIX: LANDLORD DUTIES TO REPAIR THAT DO NOT DEPEND UPON WRITTEN NOTICE FROM THE TENANT. The other duties of the landlord under the Residential Rental Agreements Act do not depend upon the receipt of written notice of a problem. These other duties involve routine maintenance and repair obligations that exist prior to or throughout the tenancy, or are the subject of local health and building codes, or concern “common areas” of apartments or condominium projects.

PART SEVEN: DUTY TO KEEP ALL COMMON AREAS AND FACILITIES IN A SAFE CONDITION. Common areas and facilities, such as hallways serving several apartment units, parking lots, play areas, laundry rooms, swimming pools open to tenants, sewage or plumbing systems serving more than one rental unit, and similar areas and facilities on the grounds of multi-family rental properties, must be maintained in a safe condition by the landlord. Injuries caused by landlords’ failure to safely maintain such areas and facilities have entitled tenants to recover money from their landlords in lawsuits. In situations where landlords’ failures to maintain these facilities have not caused injury, courts have allowed tenants to reduce the amount of monthly rent due under their leases.

PART EIGHT: DUTY TO COMPLY WITH APPLICABLE LOCAL BUILDING AND HOUSING CODES. In most North Carolina cities and large towns, landlords have additional duties to maintain the rental premises because of the requirements of local building and housing codes. Failure by the landlord to comply with these codes gives a tenant the right to take legal action under the Residential Rental Agreement Act. These local codes also allow the tenant to seek the help of local authorities who can use their own legal powers to force a landlord to comply with the requirements of the codes.

Housing Codes. Most local building and housing codes contain a long list of maintenance and safety requirements for rental property. Under these codes, owners of such property must provide safe and properly functioning heating and plumbing systems. Heating systems in many communities must be capable of heating every habitable room in a dwelling to at least 65-70 degrees. Most local codes also require that all walls, doors and windows be weather tight. Walls, ceilings and floors must be free of holes, cracks, and peeling paint, according to many local codes. Similarly, most local codes require landlords to rid multi-family (but not necessarily single family) dwellings of infestations of rodents or bugs. Under many codes, all doors and windows opening to the outside of the dwelling must have locks on them, and unless the dwelling has air conditioning, most codes require that all windows in the dwelling

be equipped with screens.

Fire Codes. Malfunctioning heating systems, electrical systems, or appliances may pose a fire hazard, which may be a violation of the local fire code in addition to violating the housing code. Anything giving off shocks, sparks, or smoke should be reported to the landlord immediately, and if not fixed promptly, reported to the local fire safety inspector. Such officers usually have legal authority to force the landlord to repair such problems quickly.

Health Codes. Malfunctioning sewage disposal systems can also constitute violations of local health codes. County or city health departments usually can force landlords to fix malfunctioning sewage disposal systems or clean contaminated well water systems.

PART NINE: OBTAINING GOVERNMENT HELP ON CODE VIOLATIONS.

To obtain the assistance of local building inspectors, fire marshals, or county health officers, little more than a phone call to the local city hall, fire department, or county health department is required.

PART TEN: DUTY TO PUT AND KEEP PREMISES IN A FIT AND HABITABLE CONDITION. This part of the Residential Rental Agreements Act requires the landlord to have the premises in good and fit condition when the tenant first moves in, and it also requires the landlord to maintain the premises so that they stay that way. This is a “catch-all” requirement that covers repair and maintenance duties not specifically described elsewhere in the Residential Rental Agreements Act.

PART ELEVEN: LEGAL REMEDIES AGAINST LANDLORDS WHO WILL NOT REPAIR. If your landlord will not make repairs required under these codes and the Residential Rental Agreements Act, **DO NOT WITHHOLD RENT PAYMENTS.** Many other states have laws allowing tenants to put their rent payments in a special “escrow” account until their landlords make needed repairs. North Carolina law does not allow tenants to withhold rent payments in this or any other way, with two exceptions: when the landlord consents to it *in writing* or when a judge or civil magistrate allows you to withhold rent pursuant to a court order.

Some landlords really will consent to a tenant’s withholding rent payments, or at least part of their rent payments. Consent usually comes through *written* agreements such as this: “Send me a receipt for whatever you paid the plumber to fix the drains and then deduct that amount from next month’s rent;” or, “knock 10% off your next month’s rent payment because of the problems with the broken air conditioner.”

PART TWELVE: COURT ORDER FOR “RENT ABATEMENT” (reduction in rent).

Too often a landlord will not make repairs and will not consent to the withholding of part of the next rent payment. In this situation, a tenant may want to file a small claims suit against the landlord requesting the court’s permission to withhold part of the next month’s rent payment to cover the costs paid by the tenant for repairs or to compensate the tenant for the reduced rental value of the dwelling.

In seeking the court’s permission to withhold the amount of money paid by the tenant to have repairs done, the tenant will need to show the following:

- (1) that the tenant has either a written or oral lease agreement with the landlord;
- (2) that the problem needing repair was the responsibility of the landlord under the Residential Rental Agreements Act, local building codes, and/or the lease agreement. (Remember, lease provisions excusing landlords from their repair and maintenance responsibilities under the Residential Rental Agreements Act are **not** enforceable.);
- (3) if the problem involved broken heating, air conditioning, plumbing, or electrical appliances furnished with the rental unit, and if the situation was not an emergency, evidence that the landlord was given written notification of the need for such repairs and that the landlord then failed to make the needed repairs within a reasonable amount of time;
- (4) copies of the bill given the tenant by the repair service, plus a receipt or canceled check showing that the bill was paid by the tenant;
- (5) if the landlord denies that the problem even required repairs or claims that the cost of the repairs were too expensive, the tenant should make arrangements to bring the repairman to Small Claims Court.
- (6) some sort of evidence (usually the tenant’s own testimony) showing how much the rental value of the house or apartment was reduced by the landlord’s failure to make required repairs.

[Tenants needing information on how to file a small claims lawsuit can obtain a Small Claims Court information package similar to this one from the Consumer Protection Section of the North Carolina Attorney General’s Office, Old Education Building, 114 West Edenton Street, 9001 Mail Service Center, Raleigh, NC 27699-9001 (telephone 919-716-6000).]

Should the Small Claims Court Judge or Magistrate be satisfied that the tenant’s case has been proved, he or she may enter a “rent abatement” order allowing the tenant to withhold part of the next month’s rent, or part of the next several month’s rent, to reimburse the tenant for the repair bills. A tenant should read the court order carefully to make sure it grants permission to withhold rent. Some Small Claims Court Judges will just award a money judgment against the landlord, which is not the same as permission to withhold future rent payments.

Where a problem has not been repaired by either the landlord or the tenant, the Court can enter an order allowing the tenant to withhold a percentage of future rent payments until the

problem is repaired by the landlord. After hearing the evidence the Court will make a determination of how much the monthly rental value of the rental unit has been reduced by the problem needing repair. For example, if the monthly rent is \$600.00 and the Court determines that the problem reduces the value of the rental unit by one-third, the judge or civil magistrate will enter a “rent abatement” order allowing the tenant to reduce monthly rental payments to \$400.00 until the problem is corrected by the landlord.

PART THIRTEEN: COURT ORDER FOR “RENT RECOUPMENT” (recovery of rent paid). If the landlord simply took a very long time to make repairs, but eventually got around to making them, the tenant may be able to bring a Small Claims Court lawsuit seeking a money judgment for the reduced rental value of the rental unit during the months that the problem went unrepaired. This type of Small Claims suit, called a suit for “rent recoupment” (recovery of rent already paid), also requires that the tenant show the court the following:

- (1) that the tenant had a lease with the landlord when the problems occurred;
- (2) that the problem needing repair was the responsibility of the landlord under the Residential Rental Agreements Act, local building codes and/or the terms of the lease agreement;
- (3) if the problem involved broken heating, air conditioning, plumbing or electrical appliances furnished with the rental unit, and if the situation was not an emergency, copies of any written notice to the landlord requesting repairs, plus some sort of testimonial evidence showing that the landlord took an unreasonable amount of time to repair the problem;
- (4) some sort of evidence (usually the tenant’s own testimony) showing how much the rental value of the house or apartment was reduced by the landlord’s failure to make required repairs.

PART FOURTEEN: OTHER LEGAL CLAIMS. In addition to the rent abatement and rent recoupment claims mentioned above, a tenant whose personal property (furniture, stereo, clothing, etc.) was damaged or destroyed by the landlord’s failure to maintain or repair the premises, as required by the Residential Rental Agreements Act, might be able to sue for either the value or the costs of repair of the damaged belongings. In some cases the tenant can recover moving expenses.

PART FIFTEEN: SHOULD YOU CONTACT AN ATTORNEY? If at all possible, an attorney should be consulted before bringing such claims against a landlord. The attorney may come up with additional claims to pursue, or the attorney may say that some claims are not proper in a particular case. Unless personal injuries or substantial property damage was involved, however, it may be financially impractical for a tenant to hire the attorney for representation in a Small Claims Court suit. Suits against landlords usually involve only a few hundred dollars, and the attorney’s fee for representation in court may be equal to or greater than the amount of money a tenant is trying to recover from the landlord. Still, the advice an attorney

can provide during a brief consultation can be important, and a brief service by an attorney, such as a letter or phone call to the landlord, may take care of the problem without requiring anyone to go to court.

Tenants having trouble locating an attorney for a consultation on landlord-tenant questions may want to try the North Carolina Lawyers Referral Service. Their toll free number is 1-800-662-7660. The Lawyers Referral Service should be able to give you the name of an attorney to consult with on landlord-tenant matters for a relatively low consultation fee.

(Revised October 2007)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SESSION LAW 2013-334
HOUSE BILL 802

AN ACT AMENDING THE LAWS RELATED TO LANDLORD AND TENANT
RELATIONSHIPS TO SHORTEN THE TIME PERIOD REQUIRED TO EVICT A
TENANT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-222 reads as rewritten:

"§ 7A-222. General trial practice and procedure.

(a) Trial of a small claim action before a magistrate is without a jury. The rules of evidence applicable in the trial of civil actions generally are observed. At the conclusion of plaintiff's evidence the magistrate may render judgment of dismissal if plaintiff has failed to establish a prima facie case. If a judgment of dismissal is not rendered the defendant may introduce evidence. At the conclusion of all the evidence the magistrate may render judgment or may in his discretion reserve judgment for a period not in excess of 10 ~~days~~days, except as provided in subsection (b) of this section.

(b) In a small claim action for summary ejectment, the magistrate shall render judgment on the same day on which the conclusion of all the evidence and submission of legal authorities occurs, unless the parties concur on an extension of additional time for entering the judgment and except for more complex summary ejectment cases, in which event the magistrate shall render judgment within five business days of the hearing. Complex summary ejectment cases include cases brought for criminal activity, breaches other than nonpayment of rent, evictions involving SECTION 8 of the Housing Act of 1937 (42 U.S.C. § 1437f) or public housing tenants, and cases with counterclaims."

SECTION 2. G.S. 7A-223 reads as rewritten:

"§ 7A-223. Practice and procedure in small claim actions for summary ejectment.

(a) In any small claim action demanding summary ejectment or past due rent, or both, the complaint may be signed by an agent acting for the plaintiff who has actual knowledge of the facts alleged in the complaint. If a small claim action demanding summary ejectment is assigned to a magistrate, the practice and procedure prescribed for commencement, form and service of process, assignment, pleadings, and trial in small claim actions generally are observed, except that if the defendant by written answer denies the title of the plaintiff, the action is placed on the civil issue docket of the district court division for trial before a district judge. In such event, the clerk withdraws assignment of the action from the magistrate and immediately gives written notice of withdrawal, by any convenient means, to the plaintiff and the magistrate to whom the action has been assigned. The plaintiff, within five days after receipt of the notice, and the

defendant, in his answer, may request trial by jury. Failure to request jury trial within the time limited is a waiver of the right to trial by jury.

(b) If either party in a small claim action for summary ejectment moves for a continuance, the magistrate shall render a decision on the motion in accordance with Rule 40(b) of the Rules of Civil Procedure. The magistrate shall not continue a matter for more than five days or until the next session of small claims court, whichever is longer, without the consent of both parties."

SECTION 3. G.S. 7A-228 reads as rewritten:

"§ 7A-228. New trial before magistrate; appeal for trial de novo; how appeal perfected; oral notice; dismissal.

(a) The chief district court judge may authorize magistrates to hear motions to set aside an order or judgment pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a magistrate. The exercise of the authority of the chief district court judge in allowing magistrates to hear Rule 60(b)(1) motions shall not be construed to limit the authority of the district court to hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief from a judgment or order entered by a magistrate and, if granted, to order a new trial before a magistrate. After final disposition before the magistrate, the sole remedy for an aggrieved party is appeal for trial de novo before a district court judge or a jury. Notice of appeal may be given orally in open court upon announcement or after entry of judgment. If not announced in open court, written notice of appeal must be filed in the office of the clerk of superior court within 10 days after entry of judgment. The appeal must be perfected in the manner set out in subsection (b). Upon announcement of the appeal in open court or upon receipt of the written notice of appeal, the appeal shall be noted upon the judgment. If the judgment was mailed to the parties, then the time computations for appeal of such judgment shall be pursuant to G.S. 1A-1, Rule 6.

(b) The appeal shall be perfected by (1) oral announcement of appeal in open court; or (2) by filing notice of appeal in the office of the clerk of superior court within 10 days after entry of judgment pursuant to subsection (a), and by serving a copy of the notice of appeal on all parties pursuant to G.S. 1A-1, Rule 5. Failure to pay the costs of court to appeal within 10 days after entry of judgment in a summary ejectment action, and within 20 days after entry of judgment in all other actions, shall result in the automatic dismissal of the appeal. Notwithstanding the foregoing deadlines, if an appealing party petitions to qualify as an indigent for the appeal and is denied, that party shall have an additional five days to perfect the appeal by paying the court costs. The failure to demand a trial by jury in district court by the appealing party before the time to perfect the appeal has expired is a waiver of the right thereto.

(b1) A person desiring to appeal as an indigent shall, within 10 days of entry of judgment by the magistrate, file an affidavit that he or she is unable by reason of poverty to pay the costs of appeal. Within 20 days after entry of judgment, a superior or district court judge, magistrate, or the clerk of the superior court may authorize a person to appeal to district court as an indigent if the person is unable to pay the costs of appeal. The clerk of superior court shall authorize a person to appeal as an indigent if the person files the required affidavit and meets one or more of the criteria listed in G.S. 1-110. A superior or district court judge, a magistrate, or the clerk of the superior court may authorize a person who does not meet any of the criteria listed in G.S. 1-110 to appeal as an indigent if the person cannot pay the costs of appeal.

The district court may dismiss an appeal and require the person filing the appeal to pay the court costs advanced if the allegations contained in the affidavit are determined to be untrue or if

the court is satisfied that the action is frivolous or malicious. If the court dismisses the appeal, the court shall affirm the judgment of the magistrate.

(c) Whenever such appeal is docketed and is regularly set for trial, and the appellant fails to appear and prosecute his appeal, the presiding judge may have the appellant called and the appeal dismissed; and in such case the judgment of the magistrate shall be affirmed.

(d) When a defendant in a summary ejection action has given notice of appeal and perfected the appeal in accordance with G.S. 7A-228(b), the plaintiff may serve upon the defendant a motion to dismiss the appeal if the defendant:

- (1) Failed to raise a defense orally or in writing in the small claims court;
- (2) Failed to file a motion, answer, or counterclaim in the district court; and
- (3) Failed to make any payment due under any applicable bond to stay execution of the judgment for possession.

The motion to dismiss the appeal shall list all of the deficiencies committed by the defendant, as described in subdivisions (1), (2), and (3) of this subsection, and shall state that the court will decide the motion to dismiss without a hearing if the defendant fails to respond within 10 days of receipt of the motion. The defendant may defeat the motion to dismiss by responding within 10 days of receipt of the motion by doing any of the following acts: (i) filing a responsive motion, answer, or counterclaim and serving the plaintiff with a copy thereof or (ii) paying the amount due under the bond to stay execution. The court shall review the file, determine whether the motion satisfies the requirements of this subsection, determine whether the defendant has made a sufficient response to defeat the motion, and shall enter an order resolving the matter without a hearing."

SECTION 4. G.S. 42-25.9 reads as rewritten:

"§ 42-25.9. Remedies.

...

(g) ~~Ten-Seven~~ days after being placed in lawful possession by execution of a writ of possession, a landlord may ~~throw away, dispose of, or sell all items of personal property remaining on the premises, premises in accordance with the provisions of this section and G.S. 42-36.2(b),~~ except that in the case of the lease of a space for a manufactured home as defined in G.S. 143-143.9(6), G.S. 44A-2(e2) shall apply to the disposition of a manufactured home with a current value in excess of five hundred dollars (\$500.00) and its contents by a landlord after being placed in lawful possession by execution of a writ of possession. During the ~~10-day seven-day~~ period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter. Upon the tenant's request prior to the expiration of the ~~10-day seven-day~~ period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. If the landlord elects to sell the property at public or private sale, the landlord shall give written notice to the tenant by first-class mail to the tenant's last known address at least seven days prior to the day of the sale. The seven-day notice of sale may run concurrently with the ~~10-day seven-day~~ period which allows the tenant to request possession of the property. The written notice shall state the date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment of unpaid rents, damages, storage fees, and sale costs, shall be disbursed to the tenant, upon request, within ~~10-seven~~ days after the sale, and will thereafter be delivered to the government of the county in which the rental property is located. Upon the tenant's request prior to the day of sale, the landlord shall release possession of the

property to the tenant during regular business hours or at a time agreed upon. The landlord may apply the proceeds of the sale to the unpaid rents, damages, storage fees, and sale costs. Any surplus from the sale shall be disbursed to the tenant, upon request, within ~~10~~seven days of the sale and shall thereafter be delivered to the government of the county in which the rental property is located.

(h) If the total value of all property remaining on the premises at the time of execution of a writ of possession in an action for summary ejectment is less than five hundred dollars (\$500.00), the property shall be deemed abandoned five days after the time of execution, and the landlord may throw away or dispose of the property. Upon the tenant's request prior to the expiration of the five-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon."

SECTION 5. G.S. 42-36.2 reads as rewritten:

"§ 42-36.2. Notice to tenant of execution of writ for possession of property; storage of evicted tenant's personal property.

(a) **When Sheriff May Remove Property.** – Before removing a tenant's personal property from demised premises pursuant to a writ for possession of real property or an order, the sheriff shall give the tenant notice of the approximate time the writ will be executed. The time within which the sheriff shall have to execute the writ shall be no more than ~~seven~~five days from the sheriff's receipt thereof. The sheriff shall remove the tenant's property, as provided in the writ, no earlier than the time specified in the notice, unless:

- (1) The landlord, or his authorized agent, signs a statement saying that the tenant's property can remain on the premises, in which case the sheriff shall simply lock the premises; or
- (2) The landlord, or his authorized agent, signs a statement saying that the landlord does not want to eject the tenant because the tenant has paid all court costs charged to him and has satisfied his indebtedness to the landlord.

Upon receipt of either statement by the landlord, the sheriff shall return the writ unexecuted to the issuing clerk of court and shall make a notation on the writ of his reasons. The sheriff shall attach a copy of the landlord's statement to the writ. If the writ is returned unexecuted because the landlord signed a statement described in subdivision (2) of this subsection, the clerk shall make an entry of satisfaction on the judgment docket. If the sheriff padlocks, the costs of the proceeding shall be charged as part of the court costs.

(b) **Sheriff May Store Property.** – When the sheriff removes the personal property of an evicted tenant from demised premises pursuant to a writ or order the tenant shall take possession of his property. If the tenant fails or refuses to take possession of his property, the sheriff may deliver the property to any storage warehouse in the county, or in an adjoining county if no storage warehouse is located in that county, for storage. The sheriff may require the landlord to advance the cost of delivering the property to a storage warehouse plus the cost of one month's storage before delivering the property to a storage warehouse. If a landlord refuses to advance these costs when requested to do so by the sheriff, the sheriff shall not remove the tenant's property, but shall return the writ unexecuted to the issuing clerk of court with a notation thereon of his reason for not executing the writ. Except for the disposition of manufactured homes and their contents as provided in G.S. 42-25.9(g) and G.S. 44A-2(e2), within ~~10 days~~seven days of the landlord's being placed in lawful possession by execution of a writ of possession and upon the tenant's request within that ~~10 day~~seven-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. During the ~~10~~

~~day~~seven-day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter. ~~After the expiration of the 10 day period, the landlord may throw away, dispose of, or sell the property in accordance with the provisions of G.S. 42-25.9(g).~~ If, after being placed in lawful possession by execution of a writ, the landlord has offered to release the tenant's property and the tenant fails to retrieve such property during the landlord's regular business hours within seven days after execution of the writ, the landlord may throw away, dispose of, or sell the property in accordance with the provisions of G.S. 42-25.9(g). If the tenant does not request release of the property within ~~10 days,~~seven days, all costs of summary ejectment, execution and storage proceedings shall be charged to the tenant as court costs and shall constitute a lien against the stored property or a claim against any remaining balance of the proceeds of a warehouseman's lien sale.

(c) Liability of the Sheriff. – A sheriff who stores a tenant's property pursuant to this section and any person acting under the sheriff's direction, control, or employment shall be liable for any claims arising out of the willful or wanton negligence in storing the tenant's property.

(d) Notice. – The notice required by subsection (a) shall, except in actions involving the lease of a space for a manufactured home as defined in G.S. 143-143.9(6), inform the tenant that failure to request possession of any property on the premises within ~~10~~seven days of execution may result in the property being thrown away, disposed of, or sold. Notice shall be made by one of the following methods:

- (1) By delivering a copy of the notice to the tenant or his authorized agent at least two days before the time stated in the notice for serving the writ;
- (2) By leaving a copy of the notice at the tenant's dwelling or usual place of abode with a person of suitable age and discretion who resides there at least two days before the time stated in the notice for serving the writ; or
- (3) By mailing a copy of the notice by first-class mail to the tenant at his last known address at least five days before the time stated in the notice for serving the writ."

SECTION 6. The Administrative Office of the Courts is directed to develop a form for parties in small claim actions for summary ejectment to inform them of the time line and process in summary ejectment actions. The clerk of superior court shall make the form available to the parties.

SECTION 7. This act becomes effective September 1, 2013, and applies to all actions for summary ejectment filed on and after that date.

In the General Assembly read three times and ratified this the 16th day of July, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 4:26 p.m. this 23rd day of July, 2013

Request for Taxpayer Identification Number and Certification

**Give form to the
requester. Do not
send to the IRS.**

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
	List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number
or
Employer identification number

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a “saving clause.” Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called “backup withholding.” Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the “Name” line. You may enter your business, trade, or “doing business as (DBA)” name on the “Business name” line.

Limited liability company (LLC). Check the “Limited liability company” box only and enter the appropriate code for the tax classification (“D” for disregarded entity, “C” for corporation, “P” for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner’s name on the “Name” line. Enter the LLC’s name on the “Business name” line.

For an LLC classified as a partnership or a corporation, enter the LLC’s name on the “Name” line and any business, trade, or DBA name on the “Business name” line.

Other entities. Enter your business name as shown on required federal tax documents on the “Name” line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the “Business name” line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the “Exempt payee” box in the line following the business name, sign and date the form.