



## **Regulatory Corner - January 2019**

### **More lessons from the trenches**

The Real Estate Bulletin that will be published in February 2019 will include summaries of two recent disciplinary cases involving North Carolina property managers who were disciplined in connection with their management of residential properties. These cases provide yet another opportunity to learn from the mistakes of others.

One of the cases involved a Raleigh firm that engaged in both sales and property management. In 2016, the firm's broker-in-charge prepared and executed a lease on behalf of the firm's owner-clients. The lease had an initial term ending on July 31, 2017, and included a provision that notice of termination had to be given at least 60 days prior to the end of the initial term.

In May 2017, the owners of the property advised the broker-in-charge that they intended to retake possession of their property in August. They asked the BIC to provide their tenants with notice that their lease would terminate effective July 31. Although the BIC claimed that he provided a termination notice prior to May 31, the tenants disputed that claim, and the BIC could not produce a copy. It was undisputed that in June 2017, the tenants gave their own notice of lease termination to the firm, with the lease termination to be effective at the end of August. This one-month delay caused the owners to incur temporary living expenses for the entire month of August, and caused the owners to file a complaint with the Commission.

The case was eventually resolved by a Consent Order. That Order also mentions two additional issues. First, it notes that the broker-in-charge failed to notify the homeowners association when the firm moved their office location. This resulted in the firm not receiving the HOA's notices regarding the managed property. Second, the broker-in-charge failed to reply to the Letters of Inquiry sent by the Commission's staff in a timely manner. The Consent Order noted that the Respondents and their owner-clients had reached a civil settlement.

On these facts, the Commission and the Respondents agreed to a settlement where the license of the firm and the broker-in-charge would be suspended for nine months. However, the Consent Order provided that the discipline would be reduced to a reprimand if the broker-in-charge completed the Commission's four-hour "Issues and Answers" course, and both the broker-in-charge and the firm agreed not to engage in property management for a period of three years.

The lesson here is that property managers must provide all required notices, whether to tenants, clients or homeowner associations, in writing. Property managers should a record

retention policy in place mandating that copies of all required notices be maintained, either on paper or electronically, for a minimum of three years after termination of their agency agreement. Had Respondents followed these simple guidelines, they could have avoided the discipline that eventually resulted.

A second case to be reported in February involves a property management firm in Roxboro. The Consent Order resolving that case makes reference to various trust account issues but also noted that some of the Respondents' lease provisions were not in compliance with Chapter 42 of the North Carolina General Statutes.

While all property managers are aware of North Carolina's Landlord and Tenant statute, which makes up Chapter 42, they may not be aware that the failure to follow the requirements of Chapter 42 could subject them to discipline by the Real Estate Commission. In the reported case, the property manager had elected to use a custom lease agreement rather than the standard form residential lease published by the North Carolina Association of REALTORS®. Although the custom agreement had been drafted by an attorney, it included provisions that violated Article 3 of Chapter 42, which deals with summary ejection, and Article 6 of Chapter 42, which is the Tenant Security Deposit Act (the "TSDA").

With respect to Article 3, the firm's lease stated that in the event of the tenant's failure to pay rent when due, the landlord and its agent would have the right, without notice or demand, to immediately terminate the lease, and re-enter and take possession of the premises. The lease made no mention of the statutory requirement to take possession only through a summary ejection proceeding.

With respect to Article 6, the firm's custom lease included a provision allowing the landlord to use the tenant's security deposit for carpet cleaning in the event the tenant failed to have the carpet professionally cleaned upon vacating the premises. Absent some unusual circumstance, carpet cleaning is not one of the uses of a tenant security deposit that is permitted under Section 42-51 of the TSDA.

This case is a reminder that while property managers are not required to use any particular form of lease, they should make sure that the lease form they use is one that is fully compliant with North Carolina law. When in doubt, consulting with an attorney familiar with landlord-tenant law is highly recommended.

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