

LEGAL MATTERS

As a student, you can obtain FREE legal assistance through UNCW's Student Government Association. Call 962.3553 for more information.

Leases

A lease is a legal contract. Read every word. Where a lease purports to impose terms which contradict public policy, those terms are unenforceable. Leases can be written, oral or composed of both written and oral agreements. If, however, you and the landlord agree to modify a provision of a written lease agreement you should insist that the modification be written and signed. When a dispute over a particular agreement or provision arises, the courts will generally enforce the written version.

Long-term Lease Agreements

Students who desire a long-term lease agreement should consult an attorney for assistance in drafting provisions which will allow an unexpected termination by the tenant upon reasonable notice. A rare instance when an oral rental agreement is not enforceable is when it purports to lease the premises for more than three years.

9-Month School vs. 12-Month Rent Liability/Subletting

A lease has a specific term defining the period for which you are assured of shelter and for which you are liable for rent. You are contractually liable for the rent to the end of the term, even if you move out, unless the landlord agrees to some other arrangements. Most written leases provide for 12-month terms.

Many students will want to keep an apartment throughout the year, but sublet to a friend during the summer. Most leases will prohibit subletting without the written consent of the landlord. It is important to know that, without an agreement with your landlord to the contrary, you as the primary tenant remain liable to the landlord for any rent or damages done by the sub-tenant.

Lease Termination

It is important to understand the proper procedure for terminating your liability under a lease agreement. Some leases contain an automatic renewal clause which provides that both the landlord and the tenant are bound to an additional term unless they follow the procedures set forth for proper notice of termination. Generally, the notice requirements for termination as set forth in the lease agreement will be enforced by the courts.

Local Government Regulations

New Hanover County has building codes, zoning powers, ordinances and enforcement authority relevant to issues that affect new construction.

Building Codes

The city has code enforcement officers who, upon a tenant's request, may inspect dangerous or substandard rental properties. When appropriate, they will require landlords to undertake repairs necessary to restore the property or issue orders of condemnation.

Noise Ordinances

All residents of New Hanover County, whether tenants or land owners, who reside in neighborhoods zoned for residential purposes, are prohibited from engaging in any activity producing noise in excess of 65 decibels in daytime and 50 decibels from 10 p.m. through 7 a.m. Citations for violations might be issued upon findings of loud and

offensive noises even when the precise noise level is not measured. "Yelling, shouting, whistling... playing of any sound magnifying device... with such volume between 10 p.m. and 7 a.m., as to annoy or disturb the quiet, comfort, or repose of a reasonably prudent person..." shall be unlawful. The City of Wilmington has a similar ordinance whereby all persons in residential areas are prohibited from engaging in any activity producing noise in excess of 65 decibels in the daytime (between the hours of 7 a.m. and 11 p.m. (midnight on Friday and Saturday) and 55 decibels in the nighttime [between 11 p.m. (midnight on Friday and Saturday) and 7 a.m.]. In addition, the City of Wilmington's ordinance lists certain enumerated activities which constitute a violation of the ordinance without a precise noise level if said activity "cause[s] a noise disturbance on neighboring premises."

Repeated violations of the city's noise ordinance may subject offenders to a penalty of up to \$500 and/or up to 30 days in jail.

Renters can be responsible for any violations by their guests if the renter is present at the time of the violation. (Wilmington City Code, Sections 6-26 to 6-32.)*

Alcoholic Beverages on Public Property

It is unlawful for any person to consume or have an open container of any malt beverage or unfortified wine on any public street, road, highway, sidewalk, right-of-way, alley or other public property in the city. **A violation of this prohibition is a misdemeanor which subjects the offender to a fine not to exceed \$500, or imprisonment not to exceed thirty (30) days.** (Wilmington City Code, Section 6-12.) These prohibitions are enforced by the Wilmington Police Department, 910.343.3600.*

The Wilmington Police Department would also like to remind students of the following: "The City of Wilmington is committed to providing a safe and secure environment for its citizens. We are proud of our downtown community and the exciting night-life it provides. However, we exercise a zero tolerance policy towards criminal law violations. Individuals who violate the law will be taken into custody before a magistrate. We exercise these precautions for your safety as well as the other law-abiding patrons in our community."†

Maximum of Three Unrelated Occupants

The City of Wilmington's zoning ordinance prohibits more than three unrelated persons from occupying a single dwelling. This ordinance is enforced in response to complaints. If a neighbor reports that there are more than three unrelated persons living in a particular dwelling, the city will send a code enforcement officer who, after determining the report's veracity, will order the extra persons to move within a specified period of time. **A violation of the city's zoning ordinance subjects the offender to a civil penalty of \$100 per day for the first day and \$200 each day thereafter. Renters and property owners can be held equally responsible for violations.** (Wilmington City Code, Section 18-812, Definitions). Call the Wilmington zoning administrator at 910.254.0900 to determine zoning regulations applicable to rental properties in the city.* For more information on New Hanover County and City of Wilmington ordinances, visit their Web sites at www.co.new-hanover.nc.us/ and www.ci.wilmington.nc.us/.

Tenant Rights & Responsibilities

The rules governing the relationship with your landlord and your neighbors are determined by certain rights and responsibilities specified in the North Carolina General Statutes, local governmental ordinances and your particular lease agreement. Lease provisions which are not contrary to law are applicable. However, it is important to know that lease provisions which violate the public policy of the state are void and unenforceable.

For instance, regardless of what rules the terms of your lease may purport to impose, your landlord may never:

- Lock you out of your dwelling without court process.
- Keep your security deposit without good cause.
- Fail to maintain the dwelling in a safe, habitable condition.

Habitability and Repairs

It is the landlord's obligation to provide you with a residence which is a safe and healthy place to live. This is known as "habitability." Among other requirements, the landlord is required to:

- Comply with the current applicable building and minimum housing codes.
- Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.
- Keep all common areas of the premises in safe condition.
- Maintain in good, safe working order and promptly repair all electrical, plumbing, sanitary, heating and other major utility systems and appliances supplied or required to be supplied by the landlord under the terms of your agreement and the law.
- Provide operable smoke detectors.

Likewise, obligations required by law on the part of the tenant include:

- To keep the premises reasonably clean.
- To dispose of garbage and waste in a clean and safe manner.
- To keep plumbing fixtures clean as their condition permits.
- To avoid deliberately or negligently defacing, damaging or removing any part of the premises or to knowingly permit any person to do so.
- To comply with any and all obligations imposed upon tenants by applicable building housing codes.
- To be responsible for damage, defacement or removal of property inside a unit within the exclusive control of the tenant unless such damage was the result of normal wear and tear, acts of the landlord, acts of third parties not invitees of the tenant or natural forces.
- To notify the landlord, in writing, of the need for replacement of, or repairs to, a smoke detector. (Tenants shall replace batteries as needed.)

Public Nuisance

Within the Wilmington city limits, property owner[s] and tenant[s] are required to keep property free from trash and garbage and maintain weeds and grass under a height of eight inches. **Any person who fails to maintain property in accordance with the requirements of the city code is subject to a civil penalty of \$100 per day for each day that the condition continues to exist.** In addition, the city may abate the offending condition and place a lien on the property. (Wilmington City Code, sections 10-28 to 10-33.) Call the Wilmington Code Enforcement Office at 910.341.3266 for information about property maintenance requirements.*

University Area Parking on Residential Lots

No owner or tenant of a property located within the identified area shall park, stand or allow to park or stand more than two vehicles in the front yard of the dwelling other than those belonging to or

being operated by the owner or a tenant of the dwelling. The area in which these parking regulations shall be enforced are as follows: Eastwood Road to the north (Cardinal Dr.); Rose Avenue and Mallard Street to the east; Oleander Avenue to the south (Hawthorne Dr.); and College Road to the west (Oriole Dr.). A violation occurs when more than two vehicles other than those vehicles belonging to the owner or tenant are found to be parked/stored on said property on more than two occasions within a thirty day period. A violation of this ordinance shall subject the offender to a civil penalty of \$100 (per infraction). This presumption shall not include any designated North Carolina state holidays. (Call the Wilmington Code Enforcement Office at 910.341.3266 for information about property maintenance requirements.*)

Security Deposits

A landlord may not charge a security deposit in excess of 1 1/2 months rent in month-to-month tenancies, nor in excess of two months rent, for terms greater than month-to-month. At the time that you move out, the landlord has 30 days to return the security deposit or to provide you with a written accounting of how it was properly used for damages.

A landlord may not debit your security deposit for normal wear and tear to the premises. It is strongly recommended that you and a witness thoroughly inspect the premises prior to move-in and prepare a list of every defect in the premises at that time. Then sign the list in the presence of a notary public who will acknowledge the date of your signature. Photographs taken at the time that you move in and at the time you move out are also helpful.

Eviction and Due Process Rights

A landlord may not lock or force you out of your dwelling. If you dispute the landlord's right to terminate your lease agreement you may remain in possession of the premises until you are served with a court summons and given the opportunity to argue your side of the case.

Rights of Domestic Violence Victims

A landlord is required under North Carolina Law to afford certain protections to victims of domestic violence. A tenant who is a victim of domestic violence and who otherwise complies with the applicable statute is entitled to have the locks to the dwelling unit changed. (North Carolina General Statutes, Section 42-42.3.) In addition, a tenant who is a victim of domestic violence may have a right to an early termination of his or her rental agreement upon giving 30 days' notice to his or her landlord, provided that the requirements of the applicable statute are met. (North Carolina General Statutes, Section 42-45.1.)

Fair Housing

Nearly all landlords are under the jurisdiction of applicable North Carolina and Federal Fair Housing Laws. Discrimination in the rental of housing on the basis of race, color, religion, sex, national origin, handicap or family status is illegal and should never be tolerated. Claimants who have proved discrimination in housing have won substantial damage awards from the courts. For more information, please refer to the State Fair Housing Act: The Law in North Carolina, Chapter 41A or on the Web www.doa.state.nc.us/hrc/fairhousing.htm.

"Legal Matters" information is adapted from the Guide to Off-Campus Living written by Mallam J. Maynard, attorney-at-law, and revised by Bryan Smith, attorney-at-law in January 2006. Additional information from various sources appears as noted.

*Information courtesy of the City of Wilmington Code Enforcement Office.

†From the brochure Security: Just for Your Information, City of Wilmington Police Department.