
Coates' Canons Blog: Periodic Inspections, Permits, and Registration of Residential Rental Property: Changes in 2017

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Local governments establish residential rental property inspection, permit, and registration (IPR) programs to ensure that residential rental properties within their jurisdictions are maintained in a safe and decent condition. In recent years, the General Assembly has sought to protect code-compliant landlords from what legislators perceived as overly zealous IPR programs. The most recent legislation in this area, Session Law 2016-122, became effective on January 1, 2017, and is explained in Community and Economic Development bulletin #9. This blog post offers some highlights from the new law. CED Bulletin #9 should be consulted for more detail.

New rules affect residential property only

Local government inspection departments have long conducted periodic inspections of commercial and residential buildings pursuant to G.S. 153A-364 and G.S. 160A-424 (the statutes were originally enacted in 1969). Recent revisions to those statutes enacted by the General Assembly have changed the rules for *residential property only*. Local governments retain the authority to inspect nonresidential buildings as they have for decades. The rules described below apply only to residential properties.

Need for “reasonable cause” before conducting inspections of residential property

Prior to inspecting residential property, reasonable cause must first be established by the inspector. The reasonable cause thresholds are described in Table 1 below. Once any of the listed thresholds has been reached, the inspector may conduct one or more inspections as determined by local policy. For example, local policy could state that any time a complaint has been received, the inspection department will institute the following program of inspections: one inspection immediately in response to the complaint, as many additional inspections as necessary to verify repairs, another inspection six months following the first inspection, and a final inspection twelve months later.

Table 1: Conduct Inspection or Place Residential Property into a Program of Periodic Inspections (G.S. 153A-364(a) and (b); G.S. 160A-424(a) and (b))

Threshold Conditions

Property has history of more than FOUR verified violations of *housing* ordinances or codes within “rolling” 12-month period

Complaint or request for inspection

Actual knowledge of unsafe condition

Violations of *local* ordinances or codes are visible from outside the property

Safety hazard in one unit of multifamily building that poses immediate threat to occupant

Property located within targeted area designated as blighted

Notice that the scope of inspections is different depending on the type of reasonable cause. For example, if reasonable cause is established by a complaint, the inspector has reasonable cause to place the *entire building* into a program of inspections. If violations of local ordinances or codes are visible from outside the property, all buildings *on the property* are subject to periodic inspections as locally determined.

Definition of verified violation

A single “verified violation” is the “aggregate of all violations of housing ordinances or codes found in an individual residential rental unit during a 72-hour period” that “have not been corrected by the owner or manager within 21 days of receipt of written notice” from the local government. The 21-day grace period may be withdrawn by the local government if the same violation occurs more than two times in a 12-month period, in which case the repeat violation immediately becomes a verified violation. Violations resulting from tenant behavior shall be deemed corrected if the landlord brings an eviction action against the tenant within 30 days.

The process for determining verified violations, withdrawing the grace period for repeat violations, and curing violations through correction or eviction, is quite complex. Community and Economic Development bulletin #9 sets forth a step-by-step process for determining how violations become “verified violations.” Fortunately, as Table 1 above illustrates, there are other means of establishing reasonable cause that do not involve verified violations.

No reasonable cause required in a targeted area for inspections

A local government may designate a “targeted area” in which reasonable cause is not required for periodic inspections. The targeted area may not exceed one square mile or five percent of the area in the jurisdiction, whichever is greater. In order to establish a targeted area, the jurisdiction must do all of the following:

1. Ensure the targeted area reflects the jurisdiction’s “stated revitalization strategy.”
2. Determine that the targeted area is “blighted” as that term is defined in Urban Redevelopment Law.
3. Hold a properly-noticed public hearing about the proposed periodic inspections plan.
4. Develop a plan to address the ability of low-income residential property owners to comply with minimum housing code standards.

Permit and registration programs for residential rental property

The statutes impose limits on local government permit programs and registration programs. A permit program (sometimes called a certificate program) requires an owner or property manager to obtain a permit or other form of permission from the local government prior to renting or leasing units. In other words, a unit cannot be rented to a tenant until a permit has been obtained. A registration program requires only that the units be registered with the local government. Registration typically involves providing information about the owner’s rental units, such as address, owner’s name, and property manager’s 24-hour contact information. Only residential rental properties with problems may be placed in a permit or registration program. Eligible rental properties (or rental units) are described in Table 2 below.

Table 2: Require Landlord to Register or Obtain Permit Prior to Renting Residential Units

(G.S. 153A-364(c); G.S. 160A-424(c))

Threshold Conditions

More than FOUR verified violations of *housing* codes within “rolling” 12-month period

TWO or more verified violations of *housing* codes in “rolling” 30-day period

Property is in top 10% of properties with crime or disorder problems as locally defined

Properties with crime or disorder problems

The top 10% of properties with crime and disorder problems is a subset of all properties that have experienced at least one crime and disorder problem during the relevant period (usually annual). The process for determining the top 10% is left to the discretion of the local government, but the process must be set forth in a local ordinance. A landlord must be notified of crime or disorder problems being counted against a property and be given an opportunity to correct the problems. When a tenant has been charged with a crime, law enforcement personnel from the jurisdiction must testify in eviction proceedings against that tenant; otherwise the tenant’s behavior cannot be counted against the property.

Fees on residential rental properties

A fee may be levied on residential rental property when the fee is also levied against *other commercial and residential properties*

, unless some other general law expressly authorizes a special fee on residential rental property. In addition, a fee may be levied against a residential rental unit or property that meets one of the thresholds summarized in Table 2 above for placing the unit or property in a registration or permit program. The situations in which a fee may be levied against a residential rental property are described in Table 3 below. See Community and Economic Development bulletin #9 for an explanation of the \$500 limit in a 12 month period.

Table 3: Levy a Special Fee or Tax on Residential Rental Property (G.S. 153A-364(c); G.S. 160A-424(c))

Threshold Conditions

When fee is also levied against other commercial and residential properties

Unit or property meets requirements for permitting described in Table 2

Business registration programs may include landlords

The purpose of a business registration program is to give local governments awareness of businesses operating within their jurisdictional boundaries. Business registration programs typically require businesses to provide basic information to the local government (type of business, addresses of office and places of business, registered agent, etc.) and to pay a nominal fee for administration of the registration program (see my colleague Trey Allen's blog post on business registration programs).

A business registration program that includes landlords among several categories of businesses is arguably permissible. The prohibitions in the IPR statutes pertain to actions on property—either a “special fee or tax on residential rental property” or an attempt to register “rental property.” However, a business registration program is not applied to property at all. It applies to the business of being a landlord, not to the residential rental properties themselves. Nonetheless, care must be exercised: a business registration program could run afoul of the IPR statutes if (1) it were applied solely to landlords or (2) it collected a fee based on the number of residential rental properties, which would begin to look like a prohibited fee on residential rental property.

No guidance on business registration of short term vacation rentals

Some jurisdictions have imposed business registration requirements on owners of short term vacation rentals. These jurisdictions argue that short term vacation rentals should not be classified as residential rental properties; rather, they assert that a short term vacation rental is used for hospitality, not as a residence, during the vacation rental season. Under that reasoning, the IPR statutes' prohibition on residential rental property registration would not apply to short term vacation rentals. The recent revisions to the IPR statutes do not clarify how a short term vacation rental should be characterized.

Vacant property registration authorized

A vacant property registration program has three primary components: (1) it requires vacant buildings or properties of any kind to be registered with the local government; (2) it directs inspectors to periodically examine the exterior of registered properties and, as required, conduct interior inspections for fire code compliance and when violations are observable from outside the property; and (3) it assesses a fee on registered properties to cover the costs of inspections and administration of the program. A vacant property registration program does not run afoul of the IPR statutes because it does not target residential rental property (if properly designed). See Question 33 in Community and Economic Development bulletin #9 for further explanation.

New appeal procedure

A limited right of appeal was added in the most recent revision to the IPR statutes. An appeal of a local government “decision” to take “action against an individual rental unit” may be made to a designated local government board. The board sits as a quasi-judicial body when hearing the appeal. See Question 37 in Community and Economic Development bulletin #9 for more detail.



Links

- www.sog.unc.edu/publications/bulletins/residential-rental-property-inspections-permits-and-registration-changes-2017
- ced.sog.unc.edu/using-a-redevelopment-area-to-attract-private-investment/
- canons.sog.unc.edu/business-registration-fees-a-few-questions-and-answers/
- scholarship.law.campbell.edu/cgi/viewcontent.cgi?article=1493&context=clr