



HOUSE BILL 551: Landlord-Tenant and HOA Changes.

2023-2024 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	April 27, 2023
Introduced by:	Reps. Bradford, Hardister, K. Hall	Prepared by:	Brian Gwyn
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: *The 2nd edition of House Bill 551 would do the following:*

- *Prohibit counties and cities from adopting certain ordinances or resolutions that would prohibit landlords from refusing to rent to tenants because a tenant's lawful source of income to pay rent includes funding from a federal housing assistance program.*
- *Regulate support animals and service animals in residential tenancies.*
- *Expand authorized litigation costs in summary ejectment matters.*
- *Clarify that late fees for past due rent can be charged if rent is 5 or more calendar days past due.*
- *Adjust the applicability of condominium and planned community declaration amendments that restrict rentals.*

Preemption of Local Regulations

BILL ANALYSIS: Section 1 would prohibit counties and cities from enacting, maintaining, or enforcing an ordinance or resolution that prohibits the refusal to lease or rent a housing accommodation to a person because the person's lawful source of income to pay rent includes funding from a federal housing assistance program. The provision could not be interpreted to prevent a county or city from enacting ordinances or resolutions applicable to owners or operators that receive funding or financial incentives from the county or city.

Support and Service Animals in Residential Tenancies

CURRENT LAW: Under the federal Fair Housing Act, housing providers must make reasonable accommodations as necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. G.S. 41A-4(f) establishes similar rights under State law.

G.S. 42-53 authorizes landlords to charge a reasonable, nonrefundable fee for pets kept by the tenant on the premises.

G.S. 168-4.2(a) guarantees the right to every person with a disability to keep a service animal trained to assist the person's disability on any premises the person leases, rents, or uses.

BILL ANALYSIS: Section 2 would prohibit landlords from doing any of the following based, in part, upon a tenant, applicant, or household member's (i) status as a person with a disability or (ii) use of a service animal or a support animal:

- Terminate or fail to renew a tenancy.
- Refuse to enter into a rental agreement.
- Impose different terms, conditions, or privileges in the rental of a dwelling.

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- Otherwise make unavailable a dwelling unit or otherwise retaliate in the rental of a dwelling.

Landlords could require a person with a disability that is not observable or already known to provide written verification from a health service professional that (i) the person is a person with a disability, (ii) a disability-related need exists for the person to use a service animal or support animal, or (iii) the support animal assists the person in managing the person's disability.

Individuals who make certain misrepresentations or materially false statements related to the need for a service animal or a support animal would be liable to the landlord for actual damages. Health service professionals would be expressly liable to landlords if they do any of the following:

- Verify a person's disability status and need for a service animal or a support animal without adequate personal knowledge of the person's condition.
- Charge a fee for providing written verification of a person's disability status and need for a service or support animal without providing any additional service to the person, unless the health service professional (i) has an ongoing relationship with a person with a disability, or (ii) conducts a good-faith consultation with a person with a disability for the purpose of providing a diagnosis and treatment recommendation.

Additionally, the court could impose civil penalties between \$500 and \$1,000.

Landlords would still be able to require that a person with a disability who uses a service or support animal do the following:

- Comply with rental agreement terms or other applicable rules or regulations on the same terms as other tenants.
- Pay for damage caused by a service or support animal on the same terms as damage caused by animals that are not service or support animals.
- Subject to applicable laws, sign an addendum or agreement setting forth responsibilities of the owner of the service or support animal.

Subject to any other federal, State, or local laws, landlords who permit service or support animals would not be liable for an injury to another person caused by the service or support animal.

Section 3 would make a conforming change to clarify that landlords could only charge a fee for pets if they are not service or support animals. Section 3 would be effective January 1, 2024, and would apply to rental agreements or leases entered into on or after that date.

Authorized Fees, Costs, and Expenses by Landlords

CURRENT LAW: G.S. 42-46 authorizes certain fees, costs, and expenses that the landlord can charge to the tenant, including late fees for rent five or more days overdue and the following out-of-pocket expenses and litigation costs:

- Filing fees charged by the court.
- Costs for service of process.
- Reasonable attorneys' fees actually paid or owed, pursuant to a written lease, not to exceed 15% of the amount owed by the tenant, or 15% of the monthly rent stated in the lease if eviction is based on a default other than the nonpayment of rent.

BILL ANALYSIS: Section 4 would clarify that late fees for past due rent could only be charged if the rental payment is 5 calendar days or more late, with the first day being the day after the rent was due. Additionally, for small claims hearings, it would allow landlords to charge reasonable attorneys' fees actually paid or owed, pursuant to a written lease, not to exceed 15% of the amount owed by the tenant or

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15% of the monthly rent stated in the lease if the eviction is based on a default other than the nonpayment of rent, as well as all actual reasonable attorneys' fees paid or owed for any appeals of summary ejection matters.

Section 4 would be effective January 1, 2024, and would apply to rental agreements or leases entered into on or after that date. The amendments contained in this section would be intended to clarify the General Assembly's intent under previous amendments to G.S. 42-46.

Amending Condominium and Planned Community Declarations

CURRENT LAW: Chapter 47C of the General Statutes governs condominiums. A condominium is defined as "real estate, portions of which are designed for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners." G.S. 47C-1-103(7).

To amend a declaration for a condominium, G.S. 47C-2-117 requires an affirmative vote or written agreement signed by unit owners of units to which at least 67% of the votes in the association are allocated or any larger majority the declaration specifies. Amendments are effective upon recordation.

Chapter 47F of the General Statutes governs planned communities. A planned community is defined as "real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration." G.S. 47F-1-103(23).

To amend a declaration for a planned community, G.S. 47F-2-117 requires an affirmative vote or written agreement signed by lot owners of lots to which at least 67% of the votes in the association are allocated, or any larger majority the declaration specifies or by the declarant if necessary for the exercise of any developmental right. Amendments are effective upon recordation.

BILL ANALYSIS: Sections 5 would make amendments to condominium declarations that restrict the rental of a unit only enforceable against an owner who acquires title to the unit after the date the amendment takes effect. Section 6 would have an identical provision for lots in planned communities.

EFFECTIVE DATE: Except as otherwise provided, the bill would be effective when it becomes law.