

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 661
Judiciary I Committee Substitute Adopted 5/12/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S661-PCS55416-RI-31

Short Title: Allocate Water Cost/Landlord-Tenant Changes.

(Public)

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT AUTHORIZING LESSORS OF CONTIGUOUS PREMISES TO ALLOCATE THE COST FOR WATER AND SEWER SERVICE TO EACH TENANT USING EQUIPMENT THAT MEASURES HOT WATER USAGE, REQUIRING LANDLORDS TO IMPROVE THE HABITABILITY OF DWELLING UNITS BY REPAIRING CERTAIN UNSAFE CONDITIONS, STAYING THE EXECUTION OF A JUDGMENT FOR SUMMARY EJECTMENT WHILE A MOTION FOR MODIFICATION OF THE UNDERTAKING IS PENDING, ESTABLISHING FEES FOR ADMINISTRATIVE SERVICES IN RESIDENTIAL TENANCIES, AND ESTABLISHING THE CIRCUMSTANCES UNDER WHICH A CITY MAY ORDER A DWELLING TO BE VACATED AND CLOSED.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 62-110(g) reads as rewritten:

"(g) In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, for the purpose of encouraging water conservation, the Commission may, consistent with the public interest, adopt procedures that allow a lessor to charge for the costs of providing water or sewer service to persons who occupy the same contiguous premises. The following provisions shall apply:

(1) All charges for water or sewer service shall be based on the user's metered consumption of water, which shall be determined by metered measurement of all water consumed and not by any partial measurement of water consumption, unless specifically authorized by the Commission.

The rate charged by the lessor shall not exceed the unit consumption rate charged by the supplier of the service.

(1a) If the contiguous premises were built prior to 1989 and the lessor determines that the measurement of the tenant's total water usage is impractical or not economical, the lessor may allocate the cost for water and sewer service to the tenant using equipment that measures the tenant's hot water usage. In that case, each tenant shall be billed a percentage of the landlord's water and sewer costs for water usage in the dwelling units based upon the hot water used in the tenant's dwelling unit. The percentage of total water usage allocated for each dwelling unit shall be equal to that dwelling unit's individually submetered hot water usage divided by all submetered hot water



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usage in all dwelling units. The following conditions apply to billing for water and sewer service under this subdivision:

- a. A lessor shall not utilize a ratio utility billing system or other allocation billing system that does not rely on individually submetered hot water usage to determine the allocation of water and sewer costs.
- b. The lessor shall not include in a tenant's bill the cost of water and sewer service used in common areas or water loss due to leaks in the lessor's water mains. A lessor shall not bill or attempt to collect for excess water usage resulting from a plumbing malfunction or other condition that is not known to the tenant or that has been reported to the lessor.
- c. All equipment used to measure water usage shall comply with guidelines promulgated by the American Water Works Association.
- d. The lessor shall maintain records for a minimum of 12 months that demonstrate how each tenant's allocated costs were calculated for water and sewer service. Upon advanced written notice to the lessor, a tenant may inspect the records during reasonable business hours.
- e. Bills for water and sewer service sent by the lessor to the tenant shall contain all the following information:
 1. The amount of water and sewer services allocated to the tenant during the billing period.
 2. The method used to determine the amount of water and sewer services allocated to the tenant.
 3. Beginning and ending dates for the billing period.
 4. The past-due date, which shall not be less than 25 days after the bill is mailed.
 5. A local or toll-free telephone number and address that the tenant can use to obtain more information about the bill.

...."

SECTION 1.(b) This section becomes effective July 1, 2010.

SECTION 2. G.S. 42-34(b) reads as rewritten:

"(b) During an appeal to district court, it shall be sufficient to stay execution of a judgment for ejectment if the defendant appellant pays to the clerk of superior court any rent in arrears as determined by the magistrate and signs an undertaking that he or she will pay into the office of the clerk of superior court the amount of the tenant's share of the contract rent as it becomes due periodically after the judgment was entered and, where applicable, comply with subdivision (c) below. For the sole purpose of determining the amount of rent in arrears pursuant to a judgment for possession pursuant to G.S. 42-30(iii), the magistrate's determination shall be based upon (i) the available evidence presented to the magistrate or (ii) the amounts listed on the face of the filed Complaint in Summary Ejectment. Provided however, when the magistrate makes a finding in the record, based on evidence presented in court, that there is an actual dispute as to the amount of rent in arrears that is due and the magistrate specifies the specific amount of rent in arrears in dispute, in order to stay execution of a judgment for ejectment, the defendant appellant shall not be required to pay to the clerk of superior court the amount of rent in arrears found by the magistrate to be in dispute, even if the magistrate's judgment includes this amount in the amount of rent found to be in arrears. If a defendant appellant appeared at the hearing before the magistrate and the magistrate found an amount of rent in arrears that was not in dispute, and if an attorney representing the defendant appellant on appeal to the district court signs a pleading stating that there is evidence of an actual dispute as to the amount of rent in arrears, then the defendant appellant shall not be

1 required to pay the rent in arrears alleged to be in dispute to stay execution of a judgment for
2 ejectment pending appeal. Any magistrate, clerk, or district court judge shall order stay of
3 execution upon the defendant appellant's paying the undisputed rent in arrears to the clerk and
4 signing the undertaking. If either party disputes the amount of the payment or the due date in
5 the undertaking, the aggrieved party may move for modification of the terms of the undertaking
6 before the clerk of superior court or the district court. Upon such motion and upon notice to all
7 interested parties, the clerk or court shall hold a hearing within 10 calendar days of the date the
8 motion is filed and determine what modifications, if any, are appropriate. No writ of possession
9 or other execution of the magistrate's judgment shall take place during the time the aggrieved
10 party's motion for modification is pending before the clerk of court."

11 **SECTION 3.** G.S. 42-42(a) is amended by adding a new subdivision to read as
12 follows:

13 **"§ 42-42. Landlord to provide fit premises.**

14 (a) The landlord shall:

15 ...

16 (8) Within a reasonable period of time based upon the severity of the condition,
17 repair or remedy any imminently dangerous condition on the premises after
18 acquiring actual knowledge or receiving notice of the condition.
19 Notwithstanding the landlord's repair or remedy of any imminently
20 dangerous condition, the landlord may recover from the tenant the actual and
21 reasonable costs of repairs that are the fault of the tenant. For purposes of
22 this subdivision, the term "imminently dangerous condition" means any of
23 the following:

24 a. Unsafe wiring.

25 b. Unsafe flooring or steps.

26 c. Unsafe ceilings or roofs.

27 d. Unsafe chimneys or flues.

28 e. Lack of potable water.

29 f. Lack of operable locks on all doors leading to the outside.

30 g. Broken windows or lack of operable locks on all windows on the
31 ground level.

32 h. Lack of operable heating facilities capable of heating living areas to
33 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from
34 November 1 through March 31.

35 i. Lack of an operable toilet.

36 j. Lack of an operable bathtub or shower.

37 k. Rat infestation as a result of defects in the structure that make the
38 premises not impervious to rodents.

39 l. Excessive standing water, sewage, or flooding problems caused by
40 plumbing leaks or inadequate drainage that contribute to mosquito
41 infestation or mold."

42 **SECTION 4.** G.S. 42-46 reads as rewritten:

43 **"§ 42-46. ~~Late fees.~~ Authorized fees.**

44 (a) In all residential rental agreements in which a definite time for the payment of the
45 rent is fixed, the parties may agree to a late fee not inconsistent with the provisions of this
46 subsection, to be chargeable only if any rental payment is five days or more late. If the rent:

47 (1) Is due in monthly installments, a landlord may charge a late fee not to
48 exceed fifteen dollars (\$15.00) or five percent (5%) of the monthly rent,
49 whichever is greater.

1 (2) Is due in weekly installments, a landlord may charge a late fee not to exceed
2 four dollars (\$4.00) or five percent (5%) of the weekly rent, whichever is
3 greater.

4 ~~(3) Is subsidized by the United States Department of Housing and Urban
5 Development, by the United States Department of Agriculture, by a State
6 agency, by a public housing authority, or by a local government, any late fee
7 shall be calculated in accordance with subdivisions (1) and (2) of this
8 subsection on the tenant's share of the contract rent only, and the rent
9 subsidy shall not be included.~~

10 (b) A late fee under ~~this subsection (a)~~ of this section may be imposed only one time for
11 each late rental payment. A late fee for a specific late rental payment may not be deducted from
12 a subsequent rental payment so as to cause the subsequent rental payment to be in default.

13 ~~(c) Any provision of a residential rental agreement contrary to the provisions of this
14 section is against the public policy of this State and therefore void and unenforceable.~~

15 (d) A lessor shall not charge a late fee to a lessee pursuant to subsection (a) of this
16 section because of the lessee's failure to pay for water or sewer services provided pursuant to
17 G.S. 62-110(g).

18 (e) Complaint-Filing Fee. – Pursuant to a written lease, a landlord may charge a
19 complaint-filing fee in an amount equal to five percent (5%) of the monthly rent only if the
20 tenant was in default of the lease, the landlord filed and served a complaint for summary
21 ejectment and/or money owed, the tenant cured the default or claim, and the landlord dismissed
22 the complaint prior to judgment. The landlord can include this fee in the amount required to
23 cure the default.

24 (f) Court-Appeal Fee. – Pursuant to a written lease, a landlord may charge a court-
25 appearance fee in an amount equal to ten percent (10%) of the monthly rent only if the tenant
26 was in default of the lease; the landlord filed, served, and prosecuted successfully a complaint
27 for summary ejectment and/or monies owed in the small claims court; and neither party
28 appealed the judgment of the magistrate.

29 (g) Second Trial Fee. – Pursuant to a written lease, a landlord may charge a second trial
30 fee for a new trial following an appeal from the judgment of a magistrate. To qualify for the
31 fee, the landlord must prove that the tenant was in default of the lease and the landlord
32 prevailed. The landlord's fee may not exceed twelve percent (12%) of the monthly rent in the
33 lease.

34 (h) Limitations on Charging and Collection of Fees.

35 (1) A landlord who claims fees under subsections (e) through (g) of this section
36 is entitled to charge and retain only one of the above fees for the landlord's
37 complaint for summary ejectment and/or money owed.

38 (2) A landlord who earns a fee under subsections (e) through (g) of this section
39 may not deduct payment of that fee from a tenant's subsequent rent payment
40 or declare a failure to pay the fee as a default of the lease for a subsequent
41 summary ejectment action.

42 (3) It is contrary to public policy for a landlord to put in a lease or claim any fee
43 for filing a complaint for summary ejectment and/or money owed other than
44 the ones expressly authorized by subsections (e) through (g) of this section,
45 and any such unauthorized fees shall be unenforceable on or after October 1,
46 2009.

47 (4) Any provision of a residential rental agreement contrary to the provisions of
48 this section is against the public policy of this State and therefore void and
49 unenforceable. A landlord who collects or attempts to collect a fee in
50 contravention of this section shall be deemed in violation of Article 2 of
51 Chapter 75 of the General Statutes.

- 1 (5) If the rent is subsidized by the United States Department of Housing and
2 Urban Development, by the United States Department of Agriculture, by a
3 State agency, by a public housing authority, or by a local government, any
4 fee charged pursuant to this section shall be calculated on the tenant's share
5 of the contract rent only, and the rent subsidy shall not be included."

6 **SECTION 5.** G.S. 42-52 reads as rewritten:

7 **"§ 42-52. Landlord's obligations.**

8 Upon termination of the ~~tenancy,~~ tenancy and delivery of possession of the premises to the
9 landlord, money held by the landlord as security may be applied as permitted in G.S. 42-51 or,
10 if not so applied, shall be refunded to the tenant. In either case the landlord in writing shall
11 itemize any damage and mail or deliver same to the tenant, together with the balance of the
12 security deposit, no later than 30 days after termination of the tenancy and delivery of
13 possession ~~by the tenant,~~ of the premises to the landlord. If the extent of the landlord's claim
14 against the security deposit cannot be determined within 30 days, the landlord shall provide the
15 tenant with an interim accounting after 30 days and shall provide a final accounting within 60
16 days after termination of the tenancy and delivery of possession of the premises to the landlord.
17 If the tenant's address is unknown the landlord shall apply the deposit as permitted in
18 G.S. 42-51 after a period of 30 days and the landlord shall hold the balance of the deposit for
19 collection by the tenant for at least six months. The landlord may not withhold as damages part
20 of the security deposit for conditions that are due to normal wear and tear nor may the landlord
21 retain an amount from the security deposit which exceeds his actual damages."

22 **SECTION 6.** G.S. 42-55 reads as rewritten:

23 **"§ 42-55. Remedies.**

24 If the landlord or the landlord's successor in interest fails to account for and refund the
25 balance of the tenant's security deposit as required by this Article, the tenant may institute a
26 civil action to require the accounting of and the recovery of the balance of the deposit. The
27 willful failure of a landlord to comply with the deposit, bond, or notice requirements of this
28 Article shall void the landlord's right to retain any portion of the tenant's security deposit as
29 otherwise permitted under G.S. 42-51. In addition to other remedies at law and equity, the
30 tenant may recover damages resulting from noncompliance by the landlord; and upon a finding
31 by the court that the party against whom judgment is rendered was in willful noncompliance
32 with this Article, the court ~~may, in its discretion, allow a reasonable attorney's fee to the duly~~
33 ~~licensed attorney representing the prevailing party, such attorney's fee to be taxed as part of the~~
34 ~~cost of court,~~ shall award treble damages as provided in G.S. 75-16, and shall award attorneys'
35 fees as provided in G.S. 75-16.1."

36 **SECTION 7.** G.S. 160A-443 reads as rewritten:

37 **"§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of public**
38 **officer.**

39 Upon the adoption of an ordinance finding that dwelling conditions of the character
40 described in G.S. 160A-441 exist within a city, the governing body of the city is hereby
41 authorized to adopt and enforce ordinances relating to dwellings within the city's territorial
42 jurisdiction that are unfit for human habitation. These ordinances shall include the following
43 provisions:

44 ...

- 45 (3) That if, after notice and hearing, the public officer determines that the
46 dwelling under consideration is unfit for human habitation, he shall state in
47 writing his findings of fact in support of that determination and shall issue
48 and cause to be served upon the owner thereof an order,
49 a. If the repair, alteration or improvement of the dwelling can be made
50 at a reasonable cost in relation to the value of the dwelling (the
51 ordinance of the city may fix a certain percentage of this value as

- 1 being reasonable), requiring the owner, within the time specified, to
2 repair, alter or improve the dwelling in order to render it fit for
3 human ~~habitation or to vacate and close the dwelling as a human~~
4 ~~habitation; or~~habitation. The order may require that the property be
5 vacated and closed only if continued occupancy during the time
6 allowed for repair will present a significant threat of bodily harm,
7 taking into account the nature of the necessary repairs, alterations, or
8 improvements; the current state of the property; and any additional
9 risks due to the presence and capacity of minors under the age of 18
10 or occupants with physical or mental disabilities. The order shall
11 state that the failure to make timely repairs as directed in the order
12 shall make the dwelling subject to the issuance of an unfit order
13 under subdivision (4) of this section; or
- 14 b. If the repair, alteration or improvement of the dwelling cannot be
15 made at a reasonable cost in relation to the value of the dwelling (the
16 ordinance of the city may fix a certain percentage of this value as
17 being reasonable), or there exists a significant threat of bodily harm
18 considering the presence and capacity of minors under the age of 18
19 or occupants with physical or mental disabilities, requiring the
20 owner, within the time specified in the order, to vacate and close or
21 remove or demolish such dwelling. However, notwithstanding any
22 other provision of law, if the dwelling is located in a historic district
23 of the city and the Historic District Commission determines, after a
24 public hearing as provided by ordinance, that the dwelling is of
25 particular significance or value toward maintaining the character of
26 the district, and the dwelling has not been condemned as unsafe, the
27 order may require that the dwelling be vacated and closed consistent
28 with G.S. 160A-400.14(a).
- 29 (4) That, if the owner fails to comply with an order to repair, alter or improve or
30 to vacate and close the dwelling, the public officer may cause the dwelling to
31 be repaired, altered or improved or to be vacated and closed; that the public
32 officer may cause to be posted on the main entrance of any dwelling so
33 closed, a placard with the following words: "This building is unfit for human
34 habitation; the use or occupation of this building for human habitation is
35 prohibited and unlawful." Occupation of a building so posted shall constitute
36 a Class 1 misdemeanor. The duties of the public officer set forth in this
37 subdivision shall not be exercised until the governing body shall have by
38 ordinance ordered the public officer to proceed to effectuate the purpose of
39 this Article with respect to the particular property or properties which the
40 public officer shall have found to be unfit for human habitation and which
41 property or properties shall be described in the ordinance. This ordinance
42 shall be recorded in the office of the register of deeds in the county wherein
43 the property or properties are located and shall be indexed in the name of the
44 property owner in the grantor index.
- 45 (5) That, if the owner fails to comply with an order to remove or demolish the
46 dwelling, the public officer may cause such dwelling to be removed or
47 demolished. The duties of the public officer set forth in this subdivision
48 subdivisions (4) and (5) shall not be exercised until the governing body shall
49 have by ordinance ordered the public officer to proceed to effectuate the
50 purpose of this Article with respect to the particular property or properties
51 which the public officer shall have found to be unfit for human habitation

1 and which property or properties shall be described in the ordinance. No
2 such ordinance shall be adopted to require demolition of a dwelling until the
3 owner has first been given a reasonable opportunity to bring it into
4 conformity with the housing code. This ordinance shall be recorded in the
5 office of the register of deeds in the county wherein the property or
6 properties are located and shall be indexed in the name of the property
7 owner in the grantor index.

8 (5a) If the governing body shall have adopted an ~~ordinance~~, ordinance as
9 provided in subdivision (4) of this section, or the public officer shall have:

10 a. In a municipality located in counties which have a population in
11 excess of 71,000 by the last federal census (including the entirety of
12 any municipality located in more than one county at least one county
13 of which has a population in excess of 71,000), other than
14 municipalities with a population in excess of 190,000 by the last
15 federal census, issued an order, ordering a dwelling to be repaired or
16 vacated and closed, as provided in subdivision (3)a, and if the ~~owner~~
17 ~~has vacated and closed such dwelling and kept such dwelling~~ has
18 been vacated and closed for a period of one year pursuant to the
19 ordinance or order;

20 b. In a municipality with a population in excess of 190,000 by the last
21 federal census, commenced proceedings under the substandard
22 housing regulations regarding a dwelling to be repaired or vacated
23 and closed, as provided in subdivision (3)a., and if the ~~owner has~~
24 ~~vacated and closed such dwelling and kept such dwelling~~ has been
25 vacated and closed for a period of one year pursuant to the ordinance
26 or after such proceedings have commenced,

27 then if the governing body shall find that the owner has abandoned the intent
28 and purpose to repair, alter or improve the dwelling in order to render it fit
29 for human habitation and that the continuation of the dwelling in its vacated
30 and closed status would be inimical to the health, safety, morals and welfare
31 of the municipality in that the dwelling would continue to deteriorate, would
32 create a fire and safety hazard, would be a threat to children and vagrants,
33 would attract persons intent on criminal activities, would cause or contribute
34 to blight and the deterioration of property values in the area, and would
35 render unavailable property and a dwelling which might otherwise have been
36 made available to ease the persistent shortage of decent and affordable
37 housing in this State, then in such circumstances, the governing body may,
38 after the expiration of such one year period, enact an ordinance and serve
39 such ordinance on the owner, setting forth the following:

40 a. If it is determined that the repair of the dwelling to render it fit for
41 human habitation can be made at a cost not exceeding fifty percent
42 (50%) of the then current value of the dwelling, the ordinance shall
43 require that the owner either repair or demolish and remove the
44 dwelling within 90 days; or

45 b. If it is determined that the repair of the dwelling to render it fit for
46 human habitation cannot be made at a cost not exceeding fifty
47 percent (50%) of the then current value of the dwelling, the
48 ordinance shall require the owner to demolish and remove the
49 dwelling within 90 days.

50 This ordinance shall be recorded in the Office of the Register of Deeds in
51 the county wherein the property or properties are located and shall be

1 indexed in the name of the property owner in the grantor index. If the owner
2 fails to comply with this ordinance, the public officer shall effectuate the
3 purpose of the ordinance.

4 This subdivision only applies to municipalities located in counties which
5 have a population in excess of 71,000 by the last federal census (including
6 the entirety of any municipality located in more than one county at least one
7 county of which has a population in excess of 71,000).

8 [This subdivision does not apply to the local government units listed in
9 subdivision (5b) of this section.]

10 (5b) If the governing body shall have adopted an ~~ordinance~~, ordinance as
11 provided in subdivision (4) of this section, or the public officer shall have:

12 a. In a municipality other than municipalities with a population in
13 excess of 190,000 by the last federal census, issued an order,
14 ordering a dwelling to be repaired or vacated and closed, as provided
15 in subdivision (3)a, and if the ~~owner has vacated and closed such~~
16 ~~dwelling and kept such dwelling~~ has been vacated and closed for a
17 period of one year pursuant to the ordinance or order;

18 b. In a municipality with a population in excess of 190,000 by the last
19 federal census, commenced proceedings under the substandard
20 housing regulations regarding a dwelling to be repaired or vacated
21 and closed, as provided in subdivision (3)a., and if the ~~owner has~~
22 ~~vacated and closed such dwelling and kept such dwelling~~ has been
23 vacated and closed for a period of one year pursuant to the ordinance
24 or after such proceedings have commenced,

25 then if the governing body shall find that the owner has abandoned the intent
26 and purpose to repair, alter or improve the dwelling in order to render it fit
27 for human habitation and that the continuation of the dwelling in its vacated
28 and closed status would be inimical to the health, safety, morals and welfare
29 of the municipality in that the dwelling would continue to deteriorate, would
30 create a fire and safety hazard, would be a threat to children and vagrants,
31 would attract persons intent on criminal activities, would cause or contribute
32 to blight and the deterioration of property values in the area, and would
33 render unavailable property and a dwelling which might otherwise have been
34 made available to ease the persistent shortage of decent and affordable
35 housing in this State, then in such circumstances, the governing body may,
36 after the expiration of such one year period, enact an ordinance and serve
37 such ordinance on the owner, setting forth the following:

38 a. If it is determined that the repair of the dwelling to render it fit for
39 human habitation can be made at a cost not exceeding fifty percent
40 (50%) of the then current value of the dwelling, the ordinance shall
41 require that the owner either repair or demolish and remove the
42 dwelling within 90 days; or

43 b. If it is determined that the repair of the dwelling to render it fit for
44 human habitation cannot be made at a cost not exceeding fifty
45 percent (50%) of the then current value of the dwelling, the
46 ordinance shall require the owner to demolish and remove the
47 dwelling within 90 days.

48 This ordinance shall be recorded in the Office of the Register of Deeds in the
49 county wherein the property or properties are located and shall be indexed in
50 the name of the property owner in the grantor index. If the owner fails to

1 comply with this ordinance, the public officer shall effectuate the purpose of
2 the ordinance.

3 This subdivision applies to the Cities of Eden, Lumberton, Roanoke
4 Rapids, and Whiteville, to the municipalities in Lee County, and the Towns
5 of Bethel, Farmville, Newport, and Waynesville only.

6 (6) Liens. –

7 a. That the amount of the cost of repairs, alterations or improvements,
8 or vacating and closing, or removal or demolition by the public
9 officer shall be a lien against the real property upon which the cost
10 was incurred, which lien shall be filed, have the same priority, and be
11 collected as the lien for special assessment provided in Article 10 of
12 this Chapter.

13 b. If the real property upon which the cost was incurred is located in an
14 incorporated city, then the amount of the cost is also a lien on any
15 other real property of the owner located within the city limits or
16 within one mile thereof except for the owner's primary residence.
17 The additional lien provided in this sub-subdivision is inferior to all
18 prior liens and shall be collected as a money judgment.

19 c. If the dwelling is removed or demolished by the public officer, he
20 shall sell the materials of the dwelling, and any personal property,
21 fixtures or appurtenances found in or attached to the dwelling, and
22 shall credit the proceeds of the sale against the cost of the removal or
23 demolition and any balance remaining shall be deposited in the
24 superior court by the public officer, shall be secured in a manner
25 directed by the court, and shall be disbursed by the court to the
26 persons found to be entitled thereto by final order or decree of the
27 court. Nothing in this section shall be construed to impair or limit in
28 any way the power of the city to define and declare nuisances and to
29 cause their removal or abatement by summary proceedings, or
30 otherwise.

31 (7) If any occupant fails to comply with an order to vacate a dwelling, the public
32 officer may file a civil action in the name of the city to remove such
33 occupant. The action to vacate the dwelling shall be in the nature of
34 summary ejectment and shall be commenced by filing a complaint naming
35 as parties-defendant any person occupying such dwelling. The clerk of
36 superior court shall issue a summons requiring the defendant to appear
37 before a magistrate at a certain time, date and place not to exceed 10 days
38 from the issuance of the summons to answer the complaint. The summons
39 and complaint shall be served as provided in G.S. 42-29. The summons shall
40 be returned according to its tenor, and if on its return it appears to have been
41 duly served, and if at the hearing the public officer produces a certified copy
42 of an ordinance adopted by the governing body pursuant to subdivision (5)
43 authorizing the officer to proceed to vacate the occupied dwelling, the
44 magistrate shall enter judgment ordering that the premises be vacated and
45 that all persons be removed. The judgment ordering that the dwelling be
46 vacated shall be enforced in the same manner as the judgment for summary
47 ejectment entered under G.S. 42-30. An appeal from any judgment entered
48 hereunder by the magistrate may be taken as provided in G.S. 7A-228, and
49 the execution of such judgment may be stayed as provided in G.S. 7A-227.
50 An action to remove an occupant of a dwelling who is a tenant of the owner
51 may not be in the nature of a summary ejectment proceeding pursuant to this

1 paragraph unless such occupant was served with notice at least 30 days
2 before the filing of the summary ejectment proceeding that the governing
3 body has ordered the public officer to proceed to exercise his duties under
4 subdivisions (4) and (5) of this section to vacate and close or remove and
5 demolish the dwelling.

6 (8) That whenever a determination is made pursuant to subdivision (3) of this
7 section that a dwelling must be vacated and closed, or removed or
8 demolished, under the provisions of this section, notice of the order shall be
9 given by first-class mail to any organization involved in providing or
10 restoring dwellings for affordable housing that has filed a written request for
11 such notices. A minimum period of 45 days from the mailing of such notice
12 shall be given before removal or demolition by action of the public officer,
13 to allow the opportunity for any organization to negotiate with the owner to
14 make repairs, lease, or purchase the property for the purpose of providing
15 affordable housing. The public officer or clerk shall certify the mailing of
16 the notices, and the certification shall be conclusive in the absence of fraud.
17 Only an organization that has filed a written request for such notices may
18 raise the issue of failure to mail such notices, and the sole remedy shall be an
19 order requiring the public officer to wait 45 days before causing removal or
20 demolition."

21 **SECTION 8.** Except as otherwise provided, this act becomes effective October 1,

22 2009.