

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 488
Judiciary I Committee Substitute Adopted 5/2/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S488-PCS85228-TG-38

Short Title: Landlord Notice NC Bar/Homeowner-Buyer Prot.

(Public)

Sponsors:

Referred to:

April 4, 2011

1 A BILL TO BE ENTITLED
2 AN ACT REQUIRING LANDLORDS TO GIVE NOTICE TO THE NORTH CAROLINA
3 STATE BAR OF AN ATTORNEY'S DEFAULT ON A LEASE IN ORDER TO
4 PROTECT THE CONFIDENTIALITY OF THE ATTORNEY'S FILES AND
5 AMENDING THE HOMEOWNER AND HOMEBUYER PROTECTION ACT.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Chapter 42 of the General Statutes is amended by adding a new
8 section to read as follows:

9 **"§ 42-14.4. Notice to State Bar of attorney default on lease.**

10 (a) If a landlord has actual knowledge that a tenant is an attorney, the landlord shall
11 deliver notice to the North Carolina State Bar (hereinafter "State Bar") at least 15 days prior to
12 the destruction or discard of any "potentially confidential materials" remaining in the premises
13 after the landlord obtains possession of the premises, whether by summary ejectment under
14 Article 3 of this Chapter or by any other means, including the tenant vacating the premises. For
15 purposes of this section, the term "potentially confidential materials" means client files, trust or
16 operating account records, or other materials relating to client matters. For purposes of this
17 section, the term "landlord" means any owner and any rental management company, rental
18 agency, or any other person having the actual or apparent authority of an agent to perform the
19 duties imposed by this Article. The landlord's notice to the State Bar shall contain the name of
20 the attorney who is presumed to be the tenant, the location of the potentially confidential
21 materials, and a phone number, address, or other means to contact the landlord. During the
22 15-day period after notice, a landlord may move for storage purposes, but shall not throw away,
23 dispose of, or sell potentially confidential materials remaining in the premises.

24 (b) The State Bar or its designee may take possession of the materials, at its sole
25 expense, within the 15-day period provided for in subsection (a) of this section without the
26 necessity of a court order. Upon the request of the State Bar, the landlord shall cooperate with
27 and allow the State Bar to take possession of the potentially confidential materials, and the
28 landlord shall not be liable in any way to the tenant for his or her cooperation. However, if the
29 tenant elects to take possession of the potentially confidential materials prior to the State Bar
30 obtaining possession of them, and there is no court order to the contrary having been previously
31 delivered to the landlord, the landlord may deliver possession of the potentially confidential
32 materials to the tenant and shall promptly notify the State Bar of his or her actions. If neither



1 the State Bar nor its designee takes possession of the potentially confidential materials within
2 the 15-day period provided for in subsection (a) of this section, the landlord may destroy or
3 discard the materials in accordance with the lease agreement with the defaulting tenant.

4 (c) A landlord that attempts in good faith to comply with the requirements of this
5 section shall not be liable for losses to any person arising directly or indirectly out of the
6 disposal of any potentially confidential materials. Failure to comply with this section shall not
7 constitute an unfair trade practice under G.S. 75-1.1."

8 **SECTION 2.** G.S. 44A-2 is amended by adding a new subsection to read as
9 follows:

10 "(h) Any landlord of nonresidential property, including any storage or self-storage space,
11 in which potentially confidential materials, as that term is defined in G.S. 42-14.4(a), remain
12 after the landlord has obtained possession of the property, must provide notice to the North
13 Carolina State Bar and comply with the provisions of G.S. 42-14.4, if the landlord has actual
14 knowledge that the former tenant is an attorney. Potentially confidential materials shall not be
15 the subject of a lien under the provisions of this Article."

16 **SECTION 3.** G.S. 47G-1 reads as rewritten:

17 **"§ 47G-1. Definitions.**

18 The following definitions apply in this Chapter:

19 (1) Covered lease ~~agreement or lease agreement.~~ – A residential lease agreement
20 ~~that is combined with, or is executed concurrently with, an option contract.~~
21 ~~in which all or some portion of the rental payments made are applied to the~~
22 ~~purchase price of the real property which is the subject of the covered lease~~
23 ~~agreement and the covered option contract.~~

24 ...

25 (4) Option contract or contract. – An option contract for the purchase of
26 property that includes or is combined with, or is executed in conjunction
27 with, a covered lease ~~agreement.~~agreement or covered lease-equity
28 agreement. The term does not include a contract that provides for the
29 delivery of a deed from the seller to the purchaser within 180 days of the
30 date of the final execution of the option contract.

31 (5) Option fee. – Any payment, however denominated, made by the option
32 purchaser to the option seller that constitutes the price the option purchaser
33 pays for the right to buy the property at a specified price in the future. No
34 option fee in an amount less than or equal to five percent (5%) of the total
35 purchase price shall constitute equity and such payment shall not in and of
36 itself create an equity of redemption.

37"

38 **SECTION 4.** G.S. 47G-7 reads as rewritten:

39 **"§ 47G-7. Remedies.**

40 ~~A violation of any provision of this Chapter constitutes an unfair trade practice under~~
41 ~~G.S. 75-1.1. An option purchaser may bring an action for the recovery of damages, to void a~~
42 ~~transaction executed in violation of this Chapter, as well as for declaratory or equitable relief~~
43 ~~for a violation of this Chapter. The rights and remedies provided herein are cumulative to, and~~
44 ~~not a limitation of, any other rights and remedies provided by law or equity.~~ equity, including
45 G.S. 75-1.1. Nothing in this Chapter shall be construed to subject an individual homeowner
46 selling his or her primary residence directly to an option purchaser to liability under
47 G.S. 75-1.1."

48 **SECTION 5.** G.S. 47H-8 reads as rewritten:

49 **"§ 47H-8. Remedies.**

50 ~~A violation of any provision of this Chapter constitutes an unfair trade practice under~~
51 ~~G.S. 75-1.1. A purchaser may bring an action for the recovery of damages, to rescind a~~

1 transaction, as well as for declaratory or equitable relief, for a violation of this Chapter. The
2 rights and remedies provided herein are cumulative to, and not a limitation of, any other rights
3 and remedies provided by law or ~~equity~~. equity, including G.S. 75-1.1. Nothing in this Chapter
4 shall be construed to subject an individual homeowner selling his or her primary residence
5 directly to a buyer to liability under G.S. 75-1.1."

6 **SECTION 6.** Sections 3, 4, and 5 of this act become effective October 1, 2011, and
7 apply to transactions entered on or after that date. The remainder of this act is effective when it
8 becomes law.