

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 488
PROPOSED COMMITTEE SUBSTITUTE S488-PCS85189-TG-16

Short Title: Landlord/State Bar Notice of Lease Default.

(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.

5 The General Assembly of North Carolina enacts:

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

8 **"§ 42-14.4. Notice to State Bar of attorney default on lease.**

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

23 (b) The State Bar or its designee may take possession of the materials, at its sole
24 expense, within the 15-day period provided for in subsection (a) of this section without the
25 necessity of a court order. Upon the request of the State Bar, the landlord shall cooperate with
26 and allow the State Bar to takes possession of the potentially confidential materials, and the
27 landlord shall not be liable in any way to the tenant for his or her cooperation. However, if the
28 tenant elects to take possession of the potentially confidential materials prior to the State Bar
29 obtaining possession of them, and there is no court order to the contrary having been previously
30 delivered to the landlord, the landlord may deliver possession of the potentially confidential
31 materials to the tenant and shall promptly notify the State Bar of his or her actions. If neither
32 the State Bar nor its designee takes possession of the potentially confidential materials within
33 the 15-day period provided for in subsection (a) of this section, the landlord may destroy or
34 discard the materials in accordance with the lease agreement with the defaulting tenant.



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

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

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

13 **SECTION 3.** This act is effective when it becomes law.