

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE DRH90087-LM-150A (03/27)

Short Title: Landlord/Tenant/Shorten Eviction Time. (Public)

Sponsors: Representatives Earle, T. Moore, W. Brawley, and Cunningham (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE LAWS RELATED TO LANDLORD AND TENANT
3 RELATIONSHIPS TO SHORTEN THE TIME PERIOD REQUIRED TO EVICT A
4 TENANT.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 7A-222 reads as rewritten:

7 **"§ 7A-222. General trial practice and procedure.**

8 Trial of a small claim action before a magistrate is without a jury. The rules of evidence
9 applicable in the trial of civil actions generally are observed. At the conclusion of plaintiff's
10 evidence the magistrate may render judgment of dismissal if plaintiff has failed to establish a
11 prima facie case. If a judgment of dismissal is not rendered the defendant may introduce
12 evidence. At the conclusion of all the evidence the magistrate may render judgment or may in
13 his discretion reserve judgment for a period not in excess of 10 days. However, in a summary
14 ejectment action, the magistrate shall render judgment on the same day on which the
15 conclusion of all the evidence occurs."

16 **SECTION 2.** G.S. 7A-223 reads as rewritten:

17 **"§ 7A-223. Practice and procedure in small claim actions for summary ejectment.**

18 (a) In any small claim action demanding summary ejectment or past due rent, or both,
19 the complaint may be signed by an agent acting for the plaintiff who has actual knowledge of
20 the facts alleged in the complaint. If a small claim action demanding summary ejectment is
21 assigned to a magistrate, the practice and procedure prescribed for commencement, form and
22 service of process, assignment, pleadings, and trial in small claim actions generally are
23 observed, except that if the defendant by written answer denies the title of the plaintiff, the
24 action is placed on the civil issue docket of the district court division for trial before a district
25 judge. In such event, the clerk withdraws assignment of the action from the magistrate and
26 immediately gives written notice of withdrawal, by any convenient means, to the plaintiff and
27 the magistrate to whom the action has been assigned. The plaintiff, within five days after
28 receipt of the notice, and the defendant, in his answer, may request trial by jury. Failure to
29 request jury trial within the time limited is a waiver of the right to trial by jury.

30 (b) When a small claim action demanding summary ejectment is assigned to a
31 magistrate, the magistrate shall conduct a trial on the date listed on the summons issued by the
32 clerk of superior court. The provisions of G.S. 42-30 shall apply to any trial under this
33 subsection. A magistrate shall not continue any summary ejectment action unless (i) the
34 magistrate has obtained the consent of the plaintiff or (ii) service of process has not been
35 obtained as provided in G.S. 42-29, in which case a magistrate shall not continue any summary



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1 ejection action for longer than five days, excluding weekends and legal holidays, without the
2 express consent of the plaintiff. If any magistrate continues any summary ejection action for
3 any reason or any period of time other than those reasons and time periods specifically
4 provided in this subsection, then for each affected case, the magistrate in his or her official
5 capacity shall pay, to the plaintiff who will sue for the same, the sum of fifty dollars (\$50.00)
6 per day multiplied by the number of days, excluding weekends and legal holidays, that the
7 magistrate continued the summary ejection action beyond the time periods specified in this
8 section."

9 **SECTION 3.** G.S. 7A-228 reads as rewritten:

10 **"§ 7A-228. New trial before magistrate; appeal for trial de novo; how appeal perfected;**
11 **oral notice; dismissal.**

12 (a) The chief district court judge may authorize magistrates to hear motions to set aside
13 an order or judgment pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a
14 magistrate. The exercise of the authority of the chief district court judge in allowing magistrates
15 to hear Rule 60(b)(1) motions shall not be construed to limit the authority of the district court to
16 hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief
17 from a judgment or order entered by a magistrate and, if granted, to order a new trial before a
18 magistrate. After final disposition before the magistrate, the sole remedy for an aggrieved party
19 is appeal for trial de novo before a district court judge or a jury. Notice of appeal may be given
20 orally in open court upon announcement or after entry of judgment. If not announced in open
21 court, written notice of appeal must be filed in the office of the clerk of superior court within 10
22 days after entry of ~~judgment~~ judgment, except that in a summary ejection action under Article
23 3 of Chapter 42 of the General Statutes written notice of appeal must be filed in the office of
24 the clerk of superior court within five days after entry of judgment. The appeal must be
25 perfected in the manner set out in subsection (b). Upon announcement of the appeal in open
26 court or upon receipt of the written notice of appeal, the appeal shall be noted upon the
27 judgment. If the judgment was mailed to the parties, then the time computations for appeal of
28 such judgment shall be pursuant to G.S. 1A-1, Rule 6.

29 (b) The appeal shall be perfected by (1) oral announcement of appeal in open court; or
30 (2) by filing notice of appeal in the office of the clerk of superior court within five days after
31 entry of judgment in a summary ejection action and within 10 days after entry of
32 judgment judgment in all other actions, pursuant to subsection (a), and by serving a copy of the
33 notice of appeal on all parties pursuant to G.S. 1A-1, Rule 5. Failure to pay the costs of court to
34 appeal within 10 days after entry of judgment in a summary ejection action and within 20
35 days after entry of judgment in all other actions shall result in the automatic dismissal of the
36 appeal. The failure to demand a trial by jury in district court by the appealing party before the
37 time to perfect the appeal has expired is a waiver of the right thereto.

38 (b1) A person desiring to appeal as an indigent shall, within five days of entry of
39 judgment by the magistrate in a summary ejection action and within 10 days of entry of
40 judgment by the ~~magistrate~~ magistrate in all other actions, file an affidavit that he or she is
41 unable by reason of poverty to pay the costs of appeal. Within 10 days after entry of judgment
42 in a summary ejection action and within 20 days after entry of ~~judgment~~ judgment in all other
43 actions a superior or district court judge, magistrate, or the clerk of the superior court may
44 authorize a person to appeal to district court as an indigent if the person is unable to pay the
45 costs of appeal. The clerk of superior court shall authorize a person to appeal as an indigent if
46 the person files the required affidavit and meets one or more of the criteria listed in G.S. 1-110.
47 A superior or district court judge, a magistrate, or the clerk of the superior court may authorize
48 a person who does not meet any of the criteria listed in G.S. 1-110 to appeal as an indigent if
49 the person cannot pay the costs of appeal.

50 The district court may dismiss an appeal and require the person filing the appeal to pay the
51 court costs advanced if the allegations contained in the affidavit are determined to be untrue or

1 if the court is satisfied that the action is frivolous or malicious. If the court dismisses the
2 appeal, the court shall affirm the judgment of the magistrate.

3 (c) Whenever such appeal is docketed and is regularly set for trial, and the appellant
4 fails to appear and prosecute his appeal, the presiding judge may have the appellant called and
5 the appeal dismissed; and in such case the judgment of the magistrate shall be affirmed."

6 **SECTION 4.** G.S. 42-25.9 reads as rewritten:

7 "**§ 42-25.9. Remedies.**

8 ...
9 (g) ~~Ten-Five~~ days after being placed in lawful possession by execution of a writ of
10 possession, a landlord may throw away, dispose of, or sell all items of personal property
11 remaining on the premises, except that in the case of the lease of a space for a manufactured
12 home as defined in G.S. 143-143.9(6), G.S. 44A-2(e2) shall apply to the disposition of a
13 manufactured home with a current value in excess of five hundred dollars (\$500.00) and its
14 contents by a landlord after being placed in lawful possession by execution of a writ of
15 possession. During the ~~40-day~~five-day period after being placed in lawful possession by
16 execution of a writ of possession, a landlord may move for storage purposes, but shall not
17 throw away, dispose of, or sell any items of personal property remaining on the premises unless
18 otherwise provided for in this Chapter. Upon the tenant's request prior to the expiration of the
19 ~~40-day~~five-day period, the landlord shall release possession of the property to the tenant during
20 regular business hours or at a time agreed upon. If the landlord elects to sell the property at
21 public or private sale, the landlord shall give written notice to the tenant by first-class mail to
22 the tenant's last known address at least ~~seven-three~~ days prior to the day of the sale. The
23 ~~seven-day~~three-day notice of sale may run concurrently with the ~~40-day~~five-day period which
24 allows the tenant to request possession of the property. The written notice shall state the date,
25 time, and place of the sale, and that any surplus of proceeds from the sale, after payment of
26 unpaid rents, damages, storage fees, and sale costs, shall be disbursed to the tenant, upon
27 request, within ~~40-five~~ days after the sale, and will thereafter be delivered to the government of
28 the county in which the rental property is located. Upon the tenant's request prior to the day of
29 sale, the landlord shall release possession of the property to the tenant during regular business
30 hours or at a time agreed upon. The landlord may apply the proceeds of the sale to the unpaid
31 rents, damages, storage fees, and sale costs. Any surplus from the sale shall be disbursed to the
32 tenant, upon request, within ~~40-five~~ days of the sale and shall thereafter be delivered to the
33 government of the county in which the rental property is located.

34 (h) If the total value of all property remaining on the premises at the time of execution
35 of a writ of possession in an action for summary ejection is less than five hundred dollars
36 (\$500.00), the property shall be deemed abandoned ~~five-two~~ days after the time of execution,
37 and the landlord may throw away or dispose of the property. Upon the tenant's request prior to
38 the expiration of the ~~five-day~~two-day period, the landlord shall release possession of the
39 property to the tenant during regular business hours or at a time agreed upon."

40 **SECTION 5.** G.S. 42-28 reads as rewritten:

41 "**§ 42-28. Summons issued by clerk.**

42 When the lessor or his assignee files a complaint pursuant to G.S. 42-26 or 42-27, and asks
43 to be put in possession of the leased premises, the clerk of superior court ~~shall~~shall, within one
44 day of the filing of the complaint, excluding weekends and legal holidays, issue a summons
45 requiring the defendant to appear at a certain time and place not to exceed seven days from the
46 issuance of the summons, excluding weekends and legal holidays, to answer the
47 complaint, complaint and to appear for trial in small claims court. If the clerk of superior court
48 refuses or otherwise fails to issue the summons or refuses or fails to set a court date on the
49 summons that is seven days or less from the issuance of the summons, excluding weekends and
50 legal holidays, then for each affected case, the clerk of superior court in his or her official
51 capacity shall pay, to the lessor who will sue for the same, the sum of fifty dollars (\$50.00) per

1 day, excluding weekends and legal holidays, multiplied by the number of days that the date of
2 the issuance of the summons or the date of trial listed on the summons exceeds the
3 requirements of this section. The plaintiff may claim rent in arrears, and damages for the
4 occupation of the premises since the cessation of the estate of the lessee, not to exceed the
5 jurisdictional amount established by G.S. 7A-210(1), but if he omits to make such claim, he
6 shall not be prejudiced thereby in any other action for their recovery."

7 **SECTION 6.** G.S. 42-36.2 reads as rewritten:

8 "**§ 42-36.2. Notice to tenant of execution of writ for possession of property; storage of**
9 **evicted tenant's personal property.**

10 (a) **When Sheriff May Remove Property.** – Before removing a tenant's personal
11 property from demised premises pursuant to a writ for possession of real property or an order,
12 the sheriff shall give the tenant notice of the approximate time the writ will be executed. The
13 time within which the sheriff shall have to execute the writ shall be no more than ~~seven~~five
14 days from the sheriff's receipt thereof. The sheriff shall remove the tenant's property, as
15 provided in the writ, no earlier than the time specified in the notice, unless:

- 16 (1) The landlord, or his authorized agent, signs a statement saying that the
17 tenant's property can remain on the premises, in which case the sheriff shall
18 simply lock the premises; or
19 (2) The landlord, or his authorized agent, signs a statement saying that the
20 landlord does not want to eject the tenant because the tenant has paid all
21 court costs charged to him and has satisfied his indebtedness to the landlord.

22 Upon receipt of either statement by the landlord, the sheriff shall return the writ unexecuted
23 to the issuing clerk of court and shall make a notation on the writ of his reasons. The sheriff
24 shall attach a copy of the landlord's statement to the writ. If the writ is returned unexecuted
25 because the landlord signed a statement described in subdivision (2) of this subsection, the
26 clerk shall make an entry of satisfaction on the judgment docket. If the sheriff padlocks, the
27 costs of the proceeding shall be charged as part of the court costs.

28 (b) **Sheriff May Store Property.** – When the sheriff removes the personal property of an
29 evicted tenant from demised premises pursuant to a writ or order the tenant shall take
30 possession of his property. If the tenant fails or refuses to take possession of his property, the
31 sheriff may deliver the property to any storage warehouse in the county, or in an adjoining
32 county if no storage warehouse is located in that county, for storage. The sheriff may require
33 the landlord to advance the cost of delivering the property to a storage warehouse plus the cost
34 of one month's storage before delivering the property to a storage warehouse. If a landlord
35 refuses to advance these costs when requested to do so by the sheriff, the sheriff shall not
36 remove the tenant's property, but shall return the writ unexecuted to the issuing clerk of court
37 with a notation thereon of his reason for not executing the writ. Except for the disposition of
38 manufactured homes and their contents as provided in G.S. 42-25.9(g) and G.S. 44A-2(e2),
39 within ~~10-five~~ days of the landlord's being placed in lawful possession by execution of a writ of
40 possession and upon the tenant's request within that ~~10-day~~five-day period, the landlord shall
41 release possession of the property to the tenant during regular business hours or at a time
42 agreed upon. During the ~~10-day~~five-day period after being placed in lawful possession by
43 execution of a writ of possession, a landlord may move for storage purposes, but shall not
44 throw away, dispose of, or sell any items of personal property remaining on the premises unless
45 otherwise provided for in this Chapter. After the expiration of the ~~10-day~~five-day period, the
46 landlord may throw away, dispose of, or sell the property in accordance with the provisions of
47 G.S. 42-25.9(g). If the tenant does not request release of the property within ~~10-five~~ days, all
48 costs of summary ejectment, execution and storage proceedings shall be charged to the tenant
49 as court costs and shall constitute a lien against the stored property or a claim against any
50 remaining balance of the proceeds of a warehouseman's lien sale.

1 (c) Liability of the Sheriff. – A sheriff who stores a tenant's property pursuant to this
2 section and any person acting under the sheriff's direction, control, or employment shall be
3 liable for any claims arising out of the willful or wanton negligence in storing the tenant's
4 property.

5 (d) Notice. – The notice required by subsection (a) shall, except in actions involving the
6 lease of a space for a manufactured home as defined in G.S. 143-143.9(6), inform the tenant
7 that failure to request possession of any property on the premises within ~~10~~five days of
8 execution may result in the property being thrown away, disposed of, or sold. Notice shall be
9 made by one of the following methods:

10 (1) By delivering a copy of the notice to the tenant or his authorized agent at
11 least two days before the time stated in the notice for serving the writ;

12 (2) By leaving a copy of the notice at the tenant's dwelling or usual place of
13 abode with a person of suitable age and discretion who resides there at least
14 two days before the time stated in the notice for serving the writ; or

15 (3) By mailing a copy of the notice by first-class mail to the tenant at his last
16 known address at least five days before the time stated in the notice for
17 serving the writ."

18 **SECTION 7.** This act becomes effective July 1, 2013, and applies to all actions for
19 summary ejection filed on and after that date.