

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H.B. 315
Mar 19, 2015
HOUSE PRINCIPAL CLERK

H

D

HOUSE DRH40151-MQ-21A (01/29)

Short Title: Sheriff & Landlord/Tenant-Writs of Poss. Chg.

(Public)

Sponsors: Representative Stevens.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL CORRECTIONS TO LANDLORD/TENANT LAW AND
3 TO PROVIDE FOR PROPER COLLECTION OF FEES AND COSTS FOR SHERIFFS
4 EXECUTING WRITS OF POSSESSION.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 42-25.9 reads as rewritten:

7 "§ 42-25.9. Remedies.

8 ...
9 (d) If any tenant abandons personal property of seven hundred fifty dollar (\$750.00)
10 value or less in the demised premises, or fails to remove such property at the time of execution
11 of a writ of possession in an action for summary ~~ejection~~, ejectment or when the sheriff locks
12 the premises pursuant to G.S. 42-36.2(a)(1), the landlord may, as an alternative to the
13 procedures provided in G.S. 42-25.9(g), 42-25.9(h), or 42-36.2, deliver the property into the
14 custody of a nonprofit organization regularly providing free or at a nominal price clothing and
15 household furnishings to people in need, upon that organization agreeing to identify and
16 separately store the property for 30 days and to release the property to the tenant at no charge
17 within the 30-day period. A landlord electing to use this procedure shall immediately post at the
18 demised premises a notice containing the name and address of the property recipient, post the
19 same notice for 30 days or more at the place where rent is received, and send the same notice
20 by first-class mail to the tenant at the tenant's last known address. Provided, however, that the
21 notice shall not include a description of the property.

22 ...
23 (g) Seven days after being placed in lawful possession by execution of a writ of
24 ~~possession~~, possession or when the sheriff locks the premises pursuant to G.S. 42-36.2(a)(1), a
25 landlord may dispose of personal property remaining on the premises in accordance with the
26 provisions of this section and G.S. 42-36.2(b), except that in the case of the lease of a space for
27 a manufactured home as defined in G.S. 143-143.9(6), G.S. 44A-2(e2) shall apply to the
28 disposition of a manufactured home with a current value in excess of five hundred dollars
29 (\$500.00) and its contents by a landlord after being placed in lawful possession by execution of
30 a writ of possession. During the seven-day period ~~after being placed in lawful possession by~~
31 ~~execution of a writ of possession~~, described in this subsection, a landlord may move for storage
32 purposes, but shall not throw away, dispose of, or sell any items of personal property remaining
33 on the premises unless otherwise provided for in this Chapter. Upon the tenant's request prior to
34 the expiration of the seven-day period, the landlord shall release possession of the property to
35 the tenant during regular business hours or at a time agreed upon. If the landlord elects to sell
36 the property at public or private sale, the landlord shall give written notice to the tenant by



1 first-class mail to the tenant's last known address at least seven days prior to the day of the sale.
2 The seven-day notice of sale may run concurrently with the seven-day period which allows the
3 tenant to request possession of the property. The written notice shall state the date, time, and
4 place of the sale, and that any surplus of proceeds from the sale, after payment of unpaid rents,
5 damages, storage fees, and sale costs, shall be disbursed to the tenant, upon request, within
6 seven days after the sale, and will thereafter be delivered to the government of the county in
7 which the rental property is located. Upon the tenant's request prior to the day of sale, the
8 landlord shall release possession of the property to the tenant during regular business hours or
9 at a time agreed upon. The landlord may apply the proceeds of the sale to the unpaid rents,
10 damages, storage fees, and sale costs. Any surplus from the sale shall be disbursed to the
11 tenant, upon request, within seven days of the sale and shall thereafter be delivered to the
12 government of the county in which the rental property is located.

13 (h) If the total value of all property remaining on the premises at the time of execution
14 of a writ of possession in an action for summary ejectment is less than five hundred dollars
15 (\$500.00), the property shall be deemed abandoned five days after the time of ~~execution,~~
16 execution or when the sheriff locks the premises pursuant to G.S. 42-36.2(a)(1), and the
17 landlord may throw away or dispose of the property. Upon the tenant's request prior to the
18 expiration of the five-day period, the landlord shall release possession of the property to the
19 tenant during regular business hours or at a time agreed upon."

20 **SECTION 2.** G.S. 7A-311(b) reads as rewritten:

21 "**§ 7A-311. Uniform civil process fees.**

22 (b) All fees that are required to be assessed, collected, and remitted under subsection (a)
23 of this section shall be collected in ~~advance (except advance, except in suits in forma pauperis)~~
24 ~~except those contingent on expenses or sales prices. pauperis.~~ When the fee is not collected in
25 advance or at the time of assessment, a lien shall exist in favor of the county on all property of
26 the party owing the fee. If the fee remains unpaid it shall be entered as a judgment against the
27 debtor and shall be docketed in the judgment docket in the office of the clerk of superior court."

28 **SECTION 3.(a)** G.S. 1-474 reads as rewritten:

29 "**§ 1-474. Order of seizure and delivery to plaintiff.**

30 (a) Order. – The clerk of court may, upon notice and hearing as provided in
31 G.S. 1-474.1 and upon the giving by the plaintiff of the undertaking prescribed in G.S. 1-475,
32 require the sheriff of the county where the property claimed is located to take the property from
33 the defendant and deliver it to the plaintiff. The act of the clerk in issuing or refusing to issue
34 the order to the sheriff is a judicial act and may be appealed pursuant to G.S. 1-301.1 to the
35 judge of the district or superior court having jurisdiction of the principal action.

36 (b) Expiration of Certain Orders. – When delivery of property is claimed from a debtor
37 who allegedly defaulted on his payments for personal property purchased under a conditional
38 sale contract, a purchase money security agreement or on a loan secured by personal property,
39 an order of seizure and delivery to the plaintiff for that property expires 60 days after it is
40 issued.

41 (c) Fee Deposit. – Upon issuance of the order described in subsection (a), the clerk of
42 court shall collect an amount from the plaintiff not to exceed one hundred dollars (\$100.00).
43 The clerk shall determine the amount of the deposit based upon the value of the property as
44 attested under G.S. 1-473, evidence presented at the hearing described in G.S. 1-474.1, or any
45 other source the clerk deems appropriate. The fee deposit shall be given to the sheriff with the
46 order and shall be used to offset the lawful fees and necessary expenses for taking and caring
47 for property seized pursuant to this Article."

48 **SECTION 3.(b)** G.S. 1-476 reads as rewritten:

49 "**§ 1-476. Sheriff's duties.**

50 Upon the receipt of the order from the clerk with the plaintiff's ~~undertaking, undertaking and~~
51 the fee deposit described in G.S. 1-474(c), the sheriff shall forthwith take the property

1 described in the affidavit, if it is in the possession of the defendant or his agent, and retain it in
2 his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice,
3 and undertaking, by delivering the same to him personally, if he can be found, or to his agent,
4 from whose possession the property is taken; or, if neither can be found, by leaving them at the
5 usual place of abode of either, with some person of suitable age and discretion."

6 **SECTION 3.(c)** G.S. 1-481 reads as rewritten:

7 "**§ 1-481. Care and delivery of seized property.**

8 When the sheriff has taken property, as provided in this Article, he must keep it in a secure
9 place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking and
10 his necessary expenses for keeping ~~it~~the property, minus any amount received pursuant to
11 G.S. 1-474(c). If the amount due under this section is less than the amount received pursuant to
12 G.S. 1-474(c), then the sheriff shall return the excess amount to the depositor. In the event that
13 a third party intervener is entitled to possession of the property, any amount received pursuant
14 to G.S. 1-474(c) shall be returned to the depositor."

15 **SECTION 4.** This act becomes effective October 1, 2015.