

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

D

HOUSE BILL 880
PROPOSED COMMITTEE SUBSTITUTE H880-PCS30447-RN-29

Short Title: Landlord/Tenant Changes.

(Public)

Sponsors:

Referred to:

April 22, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO CODIFY DAVENPORT V. D.M. RENTAL PROPERTIES, INC., REGARDING
3 CRIMINAL RECORDS OF TENANTS, OCCUPANTS, AND GUESTS; TO ALLOW FOR
4 AUTHORIZED INDIVIDUALS TO DIRECT THE REMOVAL OR DISPOSAL OF
5 CERTAIN PERSONAL PROPERTY OF A DECEDENT LOCATED IN LEASED
6 PREMISES; TO AUTHORIZE COLLECTION OF CERTAIN EXPENSES RELATED TO
7 A SUMMARY EJECTMENT PROCEEDING AND EXECUTION OF A WRIT OF
8 POSSESSION; AND TO ESTABLISH PROCEDURES FOR POST-JUDGMENT
9 SETTLEMENT AGREEMENTS BETWEEN LANDLORDS AND TENANTS.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.(a)** Article 1 of Chapter 42 of the General Statutes is amended by adding
12 a new section to read:

13 **"§ 42-14.5. Foreseeability not created by criminal record; no duty to screen.**

14 Notwithstanding any other duty or obligation which may be defined by this Chapter or
15 otherwise provided by law or any theory of liability, the criminal record of any prospective or
16 current residential lessee, occupant, or guest shall not make any future injury or damage arising
17 from that residential lessee, occupant, or guest foreseeable by the residential lessor or residential
18 lessor's agent, nor shall a residential lessor or a residential lessor's agent have a duty to screen
19 for, or to refuse to rent because of, the criminal record of a prospective or current residential
20 lessee, occupant, or guest. This statute does not prohibit a residential lessor or residential lessor's
21 agent from using a criminal background check as grounds for refusing to rent to any prospective
22 residential lessee or current lessee."

23 **SECTION 1.(b)** G.S. 42-25.7 reads as rewritten:

24 **"§ 42-25.7. Distress and distraint not permitted.**

25 It is the public policy of the State of North Carolina that distress and distraint are prohibited
26 and that landlords of residential rental property shall have rights concerning the personal property
27 of their residential tenants only in accordance with G.S. 42-25.9(d), 42-25.9(g), 42-25.9(h),
28 42-36.2, 28A-25-2, or 28A-25-7."

29 **SECTION 2.(a)** G.S. 28A-25-1 reads as rewritten:

30 **"§ 28A-25-1. Collection of property by affidavit when decedent dies intestate.**

31 (a) When a decedent dies intestate leaving personal property, less liens and
32 encumbrances thereon, not exceeding twenty thousand dollars (\$20,000) in value, at any time
33 after 30 days from the date of death, any person indebted to the decedent or having possession of
34 tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action
35 belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal
36 property or an instrument evidencing a debt, obligation, stock or chose in action to a person



* H 8 8 0 - P C S 3 0 4 4 7 - R N - 2 9 *

1 claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, or an heir or
2 creditor of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified
3 copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir
4 or creditor or the public administrator stating:

- 5 (1) The name and address of the affiant and the fact that the affiant is the public
6 administrator or an heir or creditor of the decedent;
- 7 (2) The name of the decedent and the decedent's residence at time of death;
- 8 (3) The date and place of death of the decedent;
- 9 (4) That 30 days have elapsed since the death of the decedent;
- 10 (5) That the value of all the personal property owned by the estate of the decedent,
11 less liens and encumbrances thereon, does not exceed twenty thousand dollars
12 (\$20,000);
- 13 (6) That no application or petition for appointment of a personal representative is
14 pending or has been granted in any jurisdiction;
- 15 (7) The names and addresses of those persons who are entitled, under the
16 provisions of the Intestate Succession Act, to the personal property of the
17 decedent and their relationship, if any, to the decedent; and
- 18 (8) A description sufficient to identify each tract of real property owned by the
19 decedent at the time of the decedent's death.

20 In those cases in which the affiant is the surviving spouse and sole heir of the decedent, not
21 disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected
22 pursuant to this section may exceed twenty thousand dollars (\$20,000) in value but shall not
23 exceed thirty thousand dollars (\$30,000) in value, after reduction for any spousal allowance paid
24 to the surviving spouse pursuant to G.S. 30-15. In such cases, the affidavit shall state: (i) the
25 name and address of the affiant and the fact that the affiant is the surviving spouse and is entitled,
26 under the provisions of the Intestate Succession Act, to all of the property of the decedent; (ii)
27 that the value of all of the personal property owned by the estate of the decedent, less liens and
28 encumbrances thereon, does not exceed thirty thousand dollars (\$30,000); and (iii) the
29 information required under subdivisions (2), (3), (4), (6), and (8) of this subsection.

30 ...

31 (d) The public administrator or an heir that has presented an affidavit as provided in
32 subsection (a) of this section shall be entitled to remove or otherwise dispose of the decedent's
33 personal property located in demised premises."

34 **SECTION 2.(b)** G.S. 28A-25-1.1 reads as rewritten:

35 **"§ 28A-25-1.1. Collection of property by affidavit when decedent dies testate.**

36 (a) When a decedent dies testate leaving personal property, less liens and encumbrances
37 thereon, not exceeding twenty thousand dollars (\$20,000) in value, at any time after 30 days from
38 the date of death, any person indebted to the decedent or having possession of tangible personal
39 property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the
40 decedent shall make payment of the indebtedness or deliver the tangible personal property or an
41 instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the
42 public administrator appointed pursuant to G.S. 28A-12-1, a person named or designated as
43 executor in the will, devisee, heir or creditor, of the decedent, not disqualified under
44 G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with
45 subsection (b) and made by or on behalf of the heir, the person named or designated as executor
46 in the will of the decedent, the creditor, the public administrator, or the devisee, stating:

- 47 (1) The name and address of the affiant and the fact that the affiant is the public
48 administrator, a person named or designated as executor in the will, devisee,
49 heir or creditor, of the decedent;
- 50 (2) The name of the decedent and the decedent's residence at time of death;
- 51 (3) The date and place of death of the decedent;

- 1 (4) That 30 days have elapsed since the death of the decedent;
 2 (5) That the decedent died testate leaving personal property, less liens and
 3 encumbrances thereon, not exceeding twenty thousand dollars (\$20,000) in
 4 value;
 5 (6) That the decedent's will has been admitted to probate in the court of the proper
 6 county and a duly certified copy of the will has been recorded in each county
 7 in which is located any real property owned by the decedent at the time of the
 8 decedent's death;
 9 (7) That a certified copy of the decedent's will is attached to the affidavit;
 10 (8) That no application or petition for appointment of a personal representative is
 11 pending or has been granted in any jurisdiction;
 12 (9) The names and addresses of those persons who are entitled, under the
 13 provisions of the will, or if applicable, of the Intestate Succession Act, to the
 14 property of the decedent; and their relationship, if any, to the decedent; and
 15 (10) A description sufficient to identify each tract of real property owned by the
 16 decedent at the time of the decedent's death.

17 In those cases in which the affiant is the surviving spouse, is entitled to all of the property of
 18 the decedent, and is not disqualified under G.S. 28A-4-2, the property described in this
 19 subsection that may be collected pursuant to this section may exceed twenty thousand dollars
 20 (\$20,000) in value but shall not exceed thirty thousand dollars (\$30,000) in value, after reduction
 21 for any spousal allowance paid to the surviving spouse pursuant to G.S. 30-15. In such cases, the
 22 affidavit shall state: (i) the name and address of the affiant and the fact that the affiant is the
 23 surviving spouse and is entitled, under the provisions of the decedent's will, or if applicable, of
 24 the Intestate Succession Act, to all of the property of the decedent; (ii) that the decedent died
 25 testate leaving personal property, less liens and encumbrances thereon, not exceeding thirty
 26 thousand dollars (\$30,000); and (iii) the information required under subdivisions (2), (3), (4), (6),
 27 (7), (8), and (10) of this subsection.

28 ...

29 (d) The public administrator, a person named or designated as executor in the will, a
 30 devisee, or an heir that has presented an affidavit as provided in subsection (a) of this section
 31 shall be entitled to remove or otherwise dispose of the decedent's personal property located in
 32 the demised premises."

33 **SECTION 2.(c)** G.S. 28A-25-2 reads as rewritten:

34 "**§ 28A-25-2. Effect of affidavit.**

35 The person paying, delivering, transferring or issuing personal property or the evidence
 36 thereof pursuant to an affidavit meeting the requirements of G.S. 28A-25-1(a) or
 37 G.S. 28A-25-1.1(a) is discharged and released to the same extent as if the person dealt with a
 38 duly qualified personal representative of the decedent. A lessor or lessor's agent of the demised
 39 premises that, at the direction of an affiant authorized pursuant to G.S. 28A-25-1(d) or
 40 G.S. 28A-25-1.1(d), removes, throws away, or otherwise disposes of the personal property
 41 located in demised premises is discharged and released to the same extent as if the lessor dealt
 42 with a duly qualified personal representative of the decedent. The person or lessor is not required
 43 to see to the application of the personal property or evidence thereof or to inquire into the truth
 44 of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay,
 45 deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its
 46 payment, delivery, transfer, or issuance compelled upon proof of their right in an action brought
 47 for that purpose by or on behalf of the persons entitled thereto. The court costs and attorney's fee
 48 incident to the action shall be taxed against the person whose refusal to comply with the
 49 provisions of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) made the action necessary. The heir or
 50 creditor to whom payment, delivery, transfer or issuance is made is answerable and accountable

1 therefor to any duly qualified personal representative or collector of the decedent's estate or to
2 any other person having an interest in the estate."

3 **SECTION 3.** G.S. 42-46 reads as rewritten:

4 "**§ 42-46. Authorized late fees and fees, eviction fees, fees, and other costs and expenses.**

5 ...

6 (e) Complaint-Filing Fee. – Pursuant to a written lease, a landlord may charge a
7 complaint-filing fee not to exceed fifteen dollars (\$15.00) or five percent (5%) of the monthly
8 rent, whichever is greater, only if the tenant was in default of the lease, the landlord filed ~~and~~
9 ~~served a summons and~~ a complaint for summary ejection and/or money owed, the tenant cured
10 the default or claim, and the landlord dismissed the complaint prior to judgment. The landlord
11 can include this fee in the amount required to cure the default.

12 ...

13 (i) Out-of-Pocket Expenses. – In addition to the late fees referenced in subsections (a)
14 and (b) of this section and the administrative fees of a landlord referenced in subsections (e)
15 through (g) of this section, a landlord is also permitted to charge and recover from a tenant the
16 following actual out-of-pocket expenses:

- 17 (1) Filing fees charged by the court, including those required for filing a
18 complaint and a writ of possession.
- 19 (2) Costs for service of process pursuant to G.S. 1A-1, Rule 4 of the North
20 Carolina Rules of Civil Procedure and ~~G.S. 42-29~~ G.S. 42-29, and for service
21 of the writ of possession pursuant to G.S. 1-313(4) and G.S. 42-36.2.
- 22 (3) Reasonable attorneys' fees actually incurred, pursuant to a written lease, not
23 to exceed fifteen percent (15%) of the amount owed by the tenant, or fifteen
24 percent (15%) of the monthly rent stated in the lease if the eviction is based
25 on a default other than the nonpayment of rent.

26 (j) Costs Chargeable to Tenant. – The out-of-pocket expenses listed in subsection (i) of
27 this section are allowed to be included by the landlord in the amount required to cure a default.
28 Where the court has entered a judgment in favor of the landlord, to the extent the out-of-pocket
29 expenses listed in subsection (i) of this section are not included in that judgment, those expenses
30 are chargeable to the tenant and may be collected by the landlord in any post-judgment attempt
31 to settle or collect amounts owed, provided that the expenses and collection are allowable under
32 the terms of the lease or agreement.

33 (k) Alternative Resolution. – Nothing in this section shall be deemed to prohibit the
34 landlord and tenant from reaching an agreement to resolve a dispute involving an alleged default
35 under a lease or agreement on terms agreeable to the parties, provided that such negotiated terms
36 may not involve payment of any fees, costs, or expenses not permitted by G.S. 42-46."

37 **SECTION 4.** G.S. 42-51 reads as rewritten:

38 "**§ 42-51. Permitted uses of the deposit.**

39 (a) Security deposits for residential dwelling units shall be permitted only for the
40 following:

41 ...

- 42 (8) Any fee, cost, or expense permitted by G.S. 42-46.

43 (b) The security deposit shall not exceed an amount equal to two weeks' rent if a tenancy
44 is week to week, one and one-half months' rent if a tenancy is month to month, and two months'
45 rent for terms greater than month to month. These deposits must be fully accounted for by the
46 landlord as set forth in G.S. 42-52."

47 **SECTION 5.** Article 3 of Chapter 42 of the General Statutes is amended by adding
48 a new section to read:

49 "**§ 42-36.1B. Post-judgment satisfaction agreements.**

50 (a) A landlord who enters into an agreement with a defendant to retain or regain
51 possession of the demised premises after obtaining a judgment for possession pursuant to this

1 Chapter shall submit a motion and proposed order for relief from the judgment in accordance
2 with G.S. 1A-1, Rule 60(d) to the clerk of superior court in which the judgment was entered. The
3 motion and order shall be submitted to the clerk of superior court no later than 30 days after the
4 terms of the agreement have been fulfilled. Once the agreement has been fulfilled, the landlord
5 may not cause the issuance of an execution on the judgment.

6 (b) As a result of failure to file a motion and proposed order for relief pursuant to
7 subsection (a) of this section, a landlord may be held liable for one or more of the following:

8 (1) A civil penalty of up to one hundred dollars (\$100.00), the clear proceeds of
9 which shall be remitted to the Civil Penalty and Forfeiture Fund in accordance
10 with G.S. 115C-457.2.

11 (2) The defendant's attorneys' fees and costs resulting from the failure to file a
12 motion and proposed order for relief.

13 (3) Monetary damages suffered by the defendant as follows:

14 a. For a judgment based upon unpaid rent, an amount not exceeding the
15 original amount of unpaid rent.

16 b. For a judgment not based upon unpaid rent, an amount equal to one
17 month's rent pursuant to the lease or agreement.

18 The attorneys' fees, costs, and monetary damages described in subdivisions (2) and (3) of this
19 subsection are to be paid by the landlord to the tenant."

20 **SECTION 5.5.** G.S. 1A-1, Rule 60, is amended by adding a new subsection to read:

21 "(d) Motion by prevailing party. – A party in whose favor a judgment was entered may
22 file a motion for the reasons in subsection (b) of this section for relief from the judgment entered
23 against the opposing party. Such motion shall be accompanied with a proposed order that (i)
24 grants the moving party's motion in full and (ii) dismisses with prejudice the moving party's
25 claims. Upon the moving party's filing of such motion, the clerk shall, without requiring a hearing
26 or further notice, immediately sign the proposed order, thereby granting the motion for relief
27 from the judgment that is entered in favor of the moving party and dismissing that portion of the
28 judgment in favor of the moving party with prejudice."

29 **SECTION 6.** Section 2 of this act is effective when it becomes law and applies to
30 decedents dying on or after that date. The remainder of this act is effective when it becomes law.