

2011-2012

**ORDERLY &
EXPEDITIOUS
REMOVAL BY
LANDLORD OF
PERSONAL PROPERTY
OF DECEASED
COMMITTEE**

MINUTES

**Legislative Study Committee on Orderly and Expeditious
Removal by Landlord of Personal Property of Deceased**

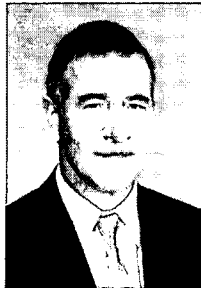
<u>Member</u>	<u>Assistant</u>	<u>Phone</u>	<u>Office</u>	<u>Seat</u>
Rep. Julia Howard, Chair	Abi Rea	733-5904	1106	2
Rep. John Blust	Betty Childress	733-5781	2208	25
Rep. Kelly Hastings	Leslie Sutter	715-2002	2123	63
Rep. Mark Hilton	Carol Wilson	733-5988	1227	17
Rep. Tim Moore	Nancy Garriss	733-4838	1326	8
Rep. Shirley Randleman	James White	733-5935	531	43
Rep. Sarah Stevens	Julie Garrison	715-1883	416 A	56

NORTH CAROLINA GENERAL ASSEMBLY

Legislative Study Committee on Orderly and Expedious Removal by Landlord of Personal Property of Deceased 2011-2012 SESSION



Rep. Julia C. Howard
Chair



Rep. John M. Blust



Rep. Kelly E. Hastings



Rep. Mark K. Hilton



Rep. Tim Moore



Rep. Shirley Randleman



Rep. Sarah Stevens

**Legislative Study Committee on Orderly and Expeditious Removal by Landlord of
Personal Property of Deceased**

Research

Wendy Ray
Barbara Riley
Greg Roney

Email

wendyg@ncleg.net
barbarar@ncleg.net
gregr@ncleg.net

Phone

919-733-2578
919-733-2578
919-733-2578

Bill Drafting

Gayle Moses

Email

gaylem@ncleg.net

Phone

919-733-6660



NORTH CAROLINA GENERAL ASSEMBLY
Legislative Services Office

George R. Hall, Legislative Services Officer

Research Division

300 N. Salisbury Street, Suite 545
Raleigh, NC 27603-5925
Tel. 919-733-2578 Fax 919-715-5460

O. Walker Reagan
Director

October 18, 2011

The Honorable Julia Howard, Chair
LRC Committee on Orderly and Expeditious Removal by
Landlord or Personal Property of Deceased
North Carolina House of Representatives
16 W. Jones Street, Room 1106
Raleigh, NC 27601-1096

Dear Representative Howard:

Congratulations on your designation as chair of the LRC Committee on Orderly and Expeditious Removal by Landlord or Personal Property of Deceased.

I have asked, Ms. Wendy Ray, Ms. Barbara Riley, and Mr. Greg Roney, with the Research Division, and Ms. Gayle Moses with the Bill Drafting Division, to serve as staff to this Committee. In accordance with the Committee's directions as expressed through the Chair, they will aid in all aspects of the Committee's work, and will attend the meetings of the Committee when it convenes upon the call of the Chair. Please note that all these individuals also will be responsible for staffing other study committees and commissions during the Interim.

Should you wish to contact Ms. Ray, Ms. Riley, and Mr. Roney, they may be reached by telephone at 919.733.2578. Ms. Moses may be reached at 919.733.6660

My best wishes to you and the Committee in its work. If I may be of any service to you or the Committee, please contact me.

Yours truly,

A handwritten signature in cursive script that reads "O. Walker Reagan".

O. Walker Reagan
Director

OWR:wsh

cc: Hon. Thom Tillis, Speaker
Hon. Philip Berger, President Pro Tempore
Mr. George Hall
Mr. Gerry Cohen
Ms. Nichole McGuinness
Ms. Sarah Wolfe

Ms. Wendy Ray
Ms. Barbara Riley
Mr. Greg Roney
Ms. Gayle Moses
Mr. Brian Peck
Ms. Becky Cook



North Carolina General Assembly

House Legislative Research Commission on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased Committee

Minutes

November 17, 2011

The House Legislative Research Commission on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased Committee met on Thursday, November 17, 2011 at 10:00 am in Room 421 of the Legislative Office Building. The following members were present: Chairwoman Howard, and Representatives Blust, Hastings, Hilton, Moore and Randleman. Staff persons present included Barbara Riley, Greg Roney, Wendy Ray and Gayle Moses. The Agenda sheet is attached and incorporated into these minutes as **attachment 1**.

Chairwoman Howard called the meeting to order at 10:07 am and recognized the members and staff present.

Chairwoman Howard recognizes Barbara Riley, of the Research Division, to proceed with her presentation entitled **2011-2012 Committee Budget Estimate** (see **attachment 2**). Barbara also discussed the rules of the committee.

Chairwoman Howard then asked for a motion and adoption of the rules. Representative Randleman motioned. Chairperson Howard asked for questions and debate to which there were none. The members voted unanimously to adopt the rules.

Chairwoman Howard then recognized Barbara Riley to proceed with her presentation on **House Bill 493** (see **attachment 3**).

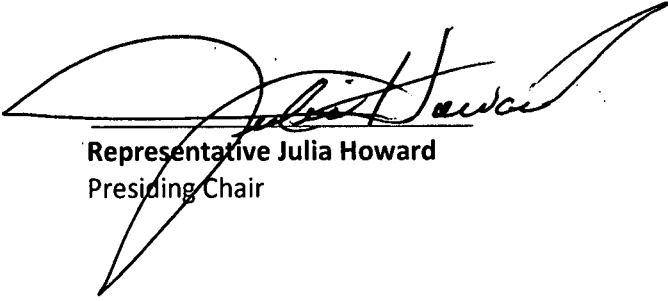
Chairwoman Howard then recognized Will Brownlee, a private practitioner, to discuss the issues encountered by landlords when tenants die without readily identifiable beneficiaries. Following presentation Will Brownlee answered questions from members.

Chairwoman Howard recognized Greg Roney, of Research Division, to proceed with his presentation on potential solutions to landlord issues regarding deceased tenants.


Chairwoman Howard then opened it up for questions from the members.

Chairwoman also introduced Elinor Floy and Kimberly Crouch of the North Carolina Bar Association.

There being no further business presently before the committee, Chairwoman Howard adjourned the meeting at 10:50 am.

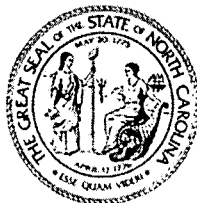


Representative Julia Howard
Presiding Chair



Abigail Rea
Clerk, House Legislative Research
Commission on Orderly and Expeditious
Removal by Landlord of Personal
Property of Deceased Committee

North Carolina General Assembly



Legislative Research Commission Orderly and Expeditious Removal by Landlord of Personal Property of Deceased Committee Agenda

**10am Thursday, November 17, 2011
Legislative Office Building, Room 421**

- 1. Welcome and Opening Remarks**
Representative Julia C. Howard, Chair
- 2. Committee Charge, Budget, and Overview of Issues**
Barbara Riley, Committee Counsel
- 3. Issues Encountered by Landlords When Tenants Die Without
Readily Identifiable Beneficiaries.**
Will Brownlee, North Carolina Apartment Association
- 4. Potential Solutions to Landlord Issues Regarding Deceased Tenants**
Greg Roney, Committee Counsel
- 5. Committee Discussion**
- 6. Instructions to Staff**

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 493
Committee Substitute Favorable 5/9/11

Short Title: Landlord Tenant Law Changes.

(Public)

Sponsors:

Referred to:

March 29, 2011

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE LAWS RELATED TO LANDLORD TENANT
3 RELATIONSHIPS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 42-34.1 reads as rewritten:

6 "§ 42-34.1. Rent pending execution of judgment; post bond pending appeal.

7 (a) If the judgment in district court is against the defendant appellant, it shall be
8 sufficient to stay execution of the judgment during the 30-day time period for taking an appeal
9 provided for in Rule 3 of the North Carolina Rules of Appellate Procedure if the defendant
10 appellant posts a bond as provided in G.S. 42-34(b). If the defendant appellant fails to make
11 rental payments as provided in the undertaking within five days of the day rent is due under the
12 terms of the residential rental agreement, the clerk of superior court shall, upon application of
13 the plaintiff appellee, immediately issue a writ of possession, and the sheriff shall dispossess
14 the defendant appellant as provided in G.S. 42-36.2.

15 (a1) If the judgment in district court is against the defendant appellant and the defendant
16 appellant does not appeal the judgment, the defendant appellant shall pay rent to the plaintiff
17 for the time the defendant appellant remains in possession of the premises after the judgment is
18 given. Rent shall be prorated if the judgment is executed before the day rent would become due
19 under the terms of the lease. The clerk of court shall disperse any rent in arrears paid by the
20 defendant appellant in accordance with a stipulation executed by all parties or, if there is no
21 stipulation, in accordance with the judge's order.

22 (b) If the judgment in district court is against the defendant appellant and the defendant
23 appellant appeals the judgment, it shall be sufficient to stay execution of the judgment if the
24 defendant appellant posts a bond as provided in G.S. 42-34(b). If the defendant appellant fails
25 to perfect the appeal or the appellate court upholds the judgment of the district court, the
26 execution of the judgment shall proceed. The clerk of court shall not disperse any rent in
27 arrears paid by the defendant appellant until all appeals have been resolved."

28 SECTION 2.(a) G.S. 42-25.9(d) reads as rewritten:

29 "(d) If any tenant abandons personal property of ~~five hundred dollar (\$500.00)~~ seven
30 hundred fifty dollars (\$750.00) value or less in the demised premises, or fails to remove such
31 property at the time of execution of a writ of possession in an action for summary ejectment,
32 the landlord may, as an alternative to the procedures provided in G.S. 42-25.9(g), 42-25.9(h), or
33 42-36.2, deliver the property into the custody of a nonprofit organization regularly providing
34 free or at a nominal price clothing and household furnishings to people in need, upon that
35 organization agreeing to identify and separately store the property for 30 days and to release the
36 property to the tenant at no charge within the 30-day period. A landlord electing to use this
37 procedure shall immediately post at the demised premises a notice containing the name and



1 address of the property recipient, post the same notice for 30 days or more at the place where
2 rent is received, and send the same notice by first-class mail to the tenant at the tenant's last
3 known address. Provided, however, that the notice shall not include a description of the
4 property."

5 **SECTION 2.(b)** G.S. 42-25.9(h) reads as rewritten:

6 "(h) If the total value of all property remaining on the premises at the time of execution
7 of a writ of possession in an action for summary ejectment is less than ~~one hundred dollars~~
8 ~~(\$100.00)~~, five hundred dollars (\$500.00), the property shall be deemed abandoned five days
9 after the time of execution, and the landlord may throw away or dispose of the property. Upon
10 the tenant's request prior to the expiration of the five-day period, the landlord shall release
11 possession of the property to the tenant during regular business hours or at a time agreed upon."

12 **SECTION 3.** G.S. 42-26 reads as rewritten:

13 **"§ 42-26. Tenant holding over may be dispossessed in certain cases.**

14 (a) Any tenant or lessee of any house or land, and the assigns under the tenant or legal
15 representatives of such tenant or lessee, who holds over and continues in the possession of the
16 demised premises, or any part thereof, without the permission of the landlord, and after demand
17 made for its surrender, may be removed from such premises in the manner hereinafter
18 prescribed in any of the following cases:

- 19 (1) When a tenant in possession of real estate holds over after his term has
20 expired.
- 21 (2) When the tenant or lessee, or other person under him, has done or omitted
22 any act by which, according to the stipulations of the lease, his estate has
23 ceased.
- 24 (3) When any tenant or lessee of lands or tenements, who is in arrear for rent or
25 has agreed to cultivate the demised premises and to pay a part of the crop to
26 be made thereon as rent, or who has given to the lessor a lien on such crop as
27 a security for the rent, deserts the demised premises, and leaves them
28 unoccupied and uncultivated.

29 (b) An arrearage in costs owed by a tenant for water or sewer services pursuant to
30 G.S. 62-110(g) shall not be used as a basis for termination of a lease under this Chapter. Any
31 payment to the landlord shall be applied first to the rent owed and then to charges for water or
32 sewer service, unless otherwise designated by the tenant.

33 (c) In an action for ejectment based upon G.S. 42-26(a)(2), the lease may provide that
34 the landlord's acceptance of partial rent or partial housing subsidy payment does not waive the
35 tenant's breach for which the right of reentry was reserved, and the landlord's exercise of such a
36 provision does not constitute a violation of Chapter 75 of the General Statutes."

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 (1) The tenant's possible nonpayment of rent and costs for water or sewer
42 services provided pursuant to G.S. 62-110(g), G.S. 62-110(g).
- 43 (2) damage-Damage to the premises, including damage to or destruction of
44 smoke detectors or carbon monoxide detectors.
- 45 (3) nonfulfillment of rental period-Damages as the result of the nonfulfillment of
46 the rental period, except where the tenant terminated the rental agreement
47 under G.S. 42-45, G.S. 42-45.1, or because the tenant was forced to leave the
48 property because of the landlord's violation of Article 2A of the General
49 Statutes or was constructively evicted by the landlord's violation of
50 G.S. 42-42(a).

- 1 (4) ~~any~~ Any unpaid bills that become a lien against the demised property due to
2 the tenant's ~~occupancy~~, occupancy.
3 (5) The costs of re-renting the premises after breach by the tenant, including any
4 reasonable fees or commissions paid by the landlord to a licensed real estate
5 broker to re-rent the premises.
6 (6) The costs of removal and storage of the tenant's property after a summary
7 ejectment proceeding or proceeding.
8 (7) ~~court costs in connection with terminating a tenancy.~~ Court costs.
9 (8) Any fee permitted by G.S. 42-46.

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

14 **SECTION 5.** G.S. 42A-11(b) reads as rewritten:

15 "(b) The vacation rental agreement shall contain provisions separate from the
16 requirements of subsection (a) of this section which shall describe the following as permitted or
17 required by this Chapter:

- 18 (1) The manner in which funds shall be received, deposited, and disbursed in
19 advance of the tenant's occupancy of the property.
20 (2) Any processing fees permitted under G.S. 42A-17(c).
21 (2a) Any cleaning fee permitted under G.S. 42A-17(d).
22 (3) The rights and obligations of the landlord and tenant under G.S. 42A-17(b).
23 (4) The applicability of expedited eviction procedures.
24 (5) The rights and obligations of the landlord or real estate broker and the tenant
25 upon the transfer of the property.
26 (6) The rights and obligations of the landlord or real estate broker and the tenant
27 under G.S. 42A-36.
28 (7) Any other obligations of the landlord and tenant."

29 **SECTION 6.** G.S. 42A-17 is amended by adding a new subsection to read:

30 "(d) A vacation rental agreement may include a cleaning fee, the amount of which shall
31 be provided in the agreement, reasonably calculated to cover the costs of cleaning the
32 residential property upon the termination of the tenancy."

33 **SECTION 7.** The General Statutes Commission shall study and recommend to the
34 2012 Regular Session of the 2011 General Assembly changes to the General Statutes to provide
35 for the orderly and expeditious removal by a landlord of the personal property of a deceased
36 tenant where the heirs are not readily identifiable or available to take possession of that
37 personal property.

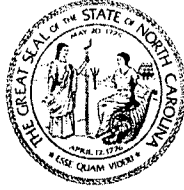
38 **SECTION 8.** Section 7 of this act is effective when it becomes law. The remainder
39 of this act becomes effective October 1, 2011, and applies to all actions for summary ejectment
40 filed on and after that date and to all residential rental agreements entered into on or after that
41 date.

2011-2012 Committee Budget Estimate

1) Legislative Members Subsistence		\$4,368.00
	\$104.00 Legislative Subsistence	
X	7 Number of Legislative members	
X	1.5 Half of Members using Two Days of Subsistence	
X	4 Number of Meetings	
=	<u>\$4,368.00</u> Total Legislative Members Subsistence	
2) Non-Legislative Members Subsistence		\$0.00
	\$116.00 * Non-Legislative Members Subsistence	
X	0 Number of Non-Legislative Members	
X	1.5 Half of Non-Legislative Members using Two Days Subsistence	
X	0 Number of Meetings	
=	<u>\$0.00</u> Total Non-Legislative Members Subsistence	
* \$101.05 Daily Per Diem Rate Plus \$15 Committee Per Diem Rate (GS138-5)		
3) Travel Expenses		\$1,960.00
a) Legislative Members		
	\$70.00 Round Trip Reimbursement (Based on 242 miles @ \$0.29 per mile*)	
X	7 Number of Legislative Members	
X	4 Number of Meetings	
=	<u>\$1,960.00</u> Total Travel for Legislative Members	
b) Non-Legislative Member		
	\$73.00 Round Trip Reimbursement (Based on 242 miles @ \$0.30 per mile*)	
X	0 Number of Non-Legislative Members	
X	0 Number of Meetings	
=	<u>\$0.00</u> Total Travel for Non-Legislative Members	
* 242 Miles is an Average per Member based on the Total Certified Round Trip Mileage		
4) Clerical Staff		\$3,272.00
	\$818.00 * Average Salary with Benefits for 5 day work week	
X	4 Number of Meetings	
=	<u>\$3,272.00</u> Total Clerical Staff	
* Average Weekly Wages for LA, CAI, CAII & CAIII with Fringes Added.		
5) Professional Staff		\$0.00
6) Special Travel and Expenses		\$0.00
7) Postage and Telephone Expenses		\$0.00
8) Supplies		\$0.00
9) Coping and Printing		\$0.00
10) Reserve		\$0.00
Total		\$9,600.00

Updated 09/01/2011

Legislative Research Commission/Orderly and Expeditious Removal by Landlord of Personal Property of Deceased Committee



North Carolina General Assembly

House Legislative Research Commission on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased Committee

Minutes

January 19, 2012

The House Legislative Research Commission on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased Committee met on Thursday, January 19, 2012 at 10:00 am in Room 421 of the Legislative Office Building. The following members were present: Chairwoman Howard, and Representatives Blust, Hastings, Hilton, and Randleman. Staff persons present included Barbara Riley, Greg Roney, Wendy Ray and Gayle Moses. The Agenda sheet is attached and incorporated into these minutes as **attachment 1**.

Chairwoman Howard called the meeting to order at 10:03 am and recognized the members and staff present.

Chairwoman Howard recognizes Gayle Moses, of the Bill Drafting, to proceed with her presentation entitled **Bill Draft 2011-LMf-123C [v.11] (11/17)** (see **attachment 2**). Gayle went through all of the changes that had been made in the bill.

Chairwoman Howard then opened it up for questions from the members.

Chairwoman Howard recognized Pete Powell from the NC Courts to discuss his issues about the bill (see **attachment 3**). Lauren Freeman from the NC Courts along with Colleen Kochanek with the Apartments Association was also introduced to discuss the issues.

Chairwoman also introduced Elinor Floy and Kimberly Crouch of the North Carolina Bar Association.

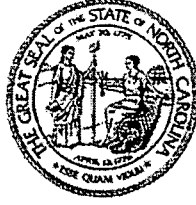
At the end of the meeting Gayle was asked to draft the changes to the bill and to send it to the members to review so that there could be a vote at the final meeting.

There being no further business presently before the committee, Chairwoman Howard adjourned the meeting at 11:18 am.

Representative Julia Howard
Presiding Chair

Abigail Rea
Clerk, House Legislative Research
Commission on Orderly and Expeditious
Removal by Landlord of Personal
Property of Deceased Committee

North Carolina General Assembly



Legislative Research Commission Orderly and Expeditious Removal by Landlord of Personal Property of Deceased Committee

Agenda

10am Thursday, January 19, 2012
Legislative Office Building, Room 421

1. Opening Remarks

Representative Julia C. Howard, Chair

2. Review Draft Legislation, "Deceased Tenant/Landlord Remove Property"

*Gayle L. Moses, Principal Legislative Analyst/Attorney, Bill Drafting
Division*

3. Committee Discussion

4. Instructions to Staff

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2011

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BILL DRAFT 2011-LMf-123C [v.11] (11/17)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

1/18/2012 8:51:29 AM

Short Title: Deceased Tenant/Landlord Remove Property.

(Public)

Sponsors: Representative Howard.

Referred to:

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A PROCESS WHEREBY A LANDLORD MAY REMOVE FROM A RESIDENTIAL DWELLING UNIT TANGIBLE PERSONAL PROPERTY BELONGING TO A DECEASED TENANT AFTER FILING AN AFFIDAVIT WITH THE CLERK OF SUPERIOR COURT IN THE COUNTY IN WHICH THE RESIDENTIAL DWELLING UNIT IS LOCATED, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION ORDERLY AND EXPEDITIOUS REMOVAL BY LANDLORD OF PERSONAL PROPERTY OF DECEASED COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 25 of Chapter 28A of the General Statutes is amended by adding a new section to read as follows:

"§ 28A-25-1.2. Removal of tangible personal property by landlord after death of residential tenant.

(a) When a decedent who is the sole tenant named in a residential lease dies leaving tangible personal property in the dwelling unit, the landlord may take possession of the property upon the filing of an affidavit that complies with the provisions of subsection (b) of this section if all of the following conditions have been met:

(1) At least 10 days has elapsed from the date the paid rental period for the dwelling unit has expired.

(2) No personal representative, collector, or receiver has been appointed for the decedent's estate under the provisions of this Chapter, Chapter 28B, or Chapter 28C of the General Statutes in the county in which the dwelling unit is located.

(3) No affidavit related to the decedent's estate has been filed under the provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1 in the county in which the dwelling unit is located.

(b) The affidavit required by subsection (a) of this section shall be on a form approved by the Administrative Office of the Courts and supplied by the clerk of superior court. The affidavit shall state all of the following:

(1) The name and address of the affiant and the fact that the affiant is the lessor of the dwelling unit.



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- (2) The name of the decedent and the fact that the decedent was the lessee of the dwelling unit and died leaving tangible personal property in the dwelling unit.
- (3) The address of the dwelling unit.
- (4) The date of the decedent's death.
- (5) The date the paid rental period expired and the fact that at least 10 days has elapsed since that date.
- (6) The affiant's good faith estimate of the value of the tangible personal property remaining in the dwelling unit.
- (7) That no personal representative, collector, or receiver has been appointed for the decedent's estate under the provisions of this Chapter, Chapter 28B, or Chapter 28C of the General Statutes in the county in which the dwelling unit is located and that no affidavit has been filed in the county under the provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1.
- (8) The name of the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant; that the affiant has made a good faith attempt to contact that person to urge that action be taken to administer the decedent's estate; and that either the affiant was unsuccessful in contacting the person or, if contacted, the person has not taken action to administer the decedent's estate. The affiant shall state the efforts made to contact the person identified in the rental application, lease agreement, or other landlord document.

(c) The affidavit shall be filed in the office of the clerk of superior court in the county in which the dwelling unit is located. The affidavit shall be filed by the clerk upon the landlord's payment of the fee of thirty dollars (\$30.00) and shall be indexed in the index to estates. The landlord shall mail a copy of the affidavit to the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant. If no contact person is identified in the rental application, lease agreement, or other landlord document, the landlord shall cause notice of the filing of the affidavit to be posted at the door of the landlord's primary rental office.

(d) Upon the filing of the affidavit, the landlord may remove the decedent's property from the dwelling unit and deliver the property for storage to any storage warehouse in the county in which the dwelling unit is located or in an adjoining county if no storage warehouse is located in that county. The landlord may also store the property in the landlord's own storage facility. Notwithstanding any provision of Chapter 42 of the General Statutes, after removing the property from the dwelling unit as provided in this subsection, the landlord shall be in possession of the dwelling unit and may let the unit as the landlord deems fit, subject to the requirements of Chapter 42 of the General Statutes.

(e) If, at least 90 days after the landlord filed the affidavit required by subsection (a) of this section, no personal representative, collector, or receiver has been appointed under the provisions of this Chapter, Chapter 28B, or Chapter 28C of the General Statutes in the county in which the dwelling unit is located and no affidavit has been filed in the county under the provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1, the landlord may take any of the following actions related to the decedent's property:

- (1) Sell the property as provided in subsection (f) of this section.
- (2) Deliver the property into the custody of a nonprofit organization regularly providing free, or at a nominal price, clothing and household furnishings to people in need for disposition in the normal course of the organization's

operations. The organization shall not be liable to anyone for the disposition of the property.

(f) If the landlord delivers the property to a nonprofit organization as authorized in subdivision (e)(2) of this section, the landlord shall provide an accounting to the clerk stating the nature of the action and the date on which the action was taken. A landlord who elects to sell the property as authorized in subdivision (e)(1) of this section may do so at a public or private sale. Whether the sale is public or private, the landlord shall, at least seven days prior to the day of sale, give written notice to the clerk and post written notice of the sale in the area designated by the clerk for the posting of notices and at the door of the landlord's primary rental office stating the date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment of unpaid rents, damages, packing and storage fees, filing fees, and sale costs shall be delivered to the clerk. The landlord may apply the proceeds of the sale to the unpaid rents, damages, packing and storage fees, filing fees, and sale costs. Any surplus from the sale shall be paid to the clerk and the landlord shall provide an accounting to the clerk showing the manner in which the proceeds of the sale were applied. The clerk shall administer the funds in the same manner as provided in G.S. 28A-25-6.

(g) If, at any time after the landlord files the affidavit required by subsection (a) of this section but before the landlord takes any of the actions authorized in subsection (e) of this section, the landlord is presented with letters of appointment or another document issued by a court indicating that a personal representative, collector, or receiver has been appointed for the decedent's estate or an affidavit filed under the provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1, the landlord shall deliver the decedent's property to the personal representative, collector, or receiver appointed or to the person who filed the affidavit."

SECTION 2. G.S. 42-25.7 reads as rewritten:

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

It is the public policy of the State of North Carolina that distress and distraint are prohibited and that landlords of residential rental property shall have rights concerning the personal property of their residential tenants only in accordance with G.S. 42-25.9(d), 42-25.9(g), 42-25.9(h), ~~or 42-36.2, 42-36.2, or 28A-25-1.2.~~"

SECTION 3. G.S. 42-25.9 reads as rewritten:

"§ 42-25.9. Remedies.

...

(b) If any lessor, landlord, or agent seizes possession of or interferes with a tenant's access to a tenant's or household member's personal property in any manner not in accordance with G.S. 44A-2(e2), 42-25.9(d), 42-25.9(g), 42-25.9(h), ~~or G.S. 42-36.2, 42-36.2, or 28A-25-1.2,~~ the tenant or household member shall be entitled to recover possession of his personal property or compensation for the value of the personal property, and, in any action brought by a tenant or household member under this Article, the landlord shall be liable to the tenant or household member for actual damages, but not including punitive damages, treble damages or damages for emotional distress.

...

(d) If any tenant abandons personal property of five hundred dollar (\$500.00) value or less in the demised premises, or fails to remove such property at the time of execution of a writ of possession in an action for summary ejectment, the landlord may, as an alternative to the procedures provided in G.S. 42-25.9(g), 42-25.9(h), ~~or 42-36.2, 42-36.2, or 28A-25-1.2,~~ deliver the property into the custody of a nonprofit organization regularly providing free or at a nominal price clothing and household furnishings to people in need, upon that organization agreeing to identify and separately store the property for 30 days and to release the property to the tenant at no charge within the 30-day period. A landlord electing to use this procedure shall immediately post at the demised premises a notice containing the name and address of the

1 property recipient, post the same notice for 30 days or more at the place where rent is received,
2 and send the same notice by first-class mail to the tenant at the tenant's last known address.
3 Provided, however, that the notice shall not include a description of the property.

4"

5 **SECTION 4.** This act becomes effective October 1, 2012.
6
7
8

Abigail Rea (Rep. Julia Howard)

From: Powell, Pete E. <Pete.E.Powell@nccourts.org>
Sent: Wednesday, January 18, 2012 5:37 PM
To: Colleen Kochanek; Rep. Julia Howard
Cc: Kim Crouch; Freeman, Lorrin N.; Tilley, Todd W.; Moore, Barbara D.
Subject: RE: DRAFT FOR 1/19/2012 MEETING - Deceased Tenant

I understand the difficulty with dealing with a situation where a tenant has died or has abandoned leased premises. At the same time, the suggested process should require due process for the protection of the persons whose property will be taken. I have three issues which I have discussed with the Chair of the Clerks Legislative Committee and been asked to raise.

The first issue is that the process in Section I only requires the applicant to file an affidavit, and then can proceed without any requirement of court authorization or approval. This does not contemplate the circumstance where an affidavit is legally insufficient, for example by not containing required information or setting forth the efforts made to contact persons entitled to notice. The legislation should provide the "application" is a sworn petition, perhaps as an estate proceeding, and that the clerk may enter an order authorizing the landlord to proceed.

Secondly, when a tenant abandons leased premises, they generally leave little or nothing behind. That is not the case when a tenant dies, as typically all their furniture and worldly goods remain. Generally, when a tenant abandons the premises, the landlord must bring a summary ejectment action to gain possession of the premises, and then they can deal with any personal property left behind under GS 44A-2(e). There is one rarely used exception. GS 42-25.9(d) provides that when the abandoned property is worth less than \$500 the landlord can skip the summary ejectment process and deliver the tenant's property to a non-profit which must separately store the property for 30 days before being free to dispose of the property. The proposed legislation creates a process for dealing with the personal property of a deceased tenant in Section I, but then creates yet another exception by amending GS 42-25.9(d) to also allow a landlord to bypass a summary ejectment proceeding when the property is worth less than \$500, and to immediately deliver the deceased tenant's property to a non-profit. I foresee substantial arguments about whether the property value was above or below \$500 in a tenant death situation. As I noted above, normally those do not occur in an abandonment situation since little is left behind. Frankly, the process in the current GS 42-25.9 is very rarely, if ever used. Accordingly, I suggest that the proposed amendment to GS 42-25.9(d) be deleted.

Finally, there is the issue of the filing fee for the estate proceeding. The legislation proposes \$30. The clerk takes in the petition, sets up a file, issues an order authorizing the landlord to proceed (under our suggestion) and processes and approves an accounting. This is a substantial amount of work at a time when clerks' offices are severely understaffed. That may justify requiring a fiscal note to determine an appropriate fee.....P

Peter E. Powell
Legal Counsel
N. C. Administrative Office of the Courts
P. O. Box 2448
Raleigh, NC 27602
Tel: 919-890-1303
Fax: 919-890-1914
E: pete.e.powell@nccourts.org

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North Carolina General Assembly

House Legislative Research Commission on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased Committee

Minutes

February 27, 2012

The House Legislative Research Commission on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased Committee met on Monday, February 27, 2012 at 10:00 am in Room 421 of the Legislative Office Building. The following members were present: Chairwoman Howard, and Representatives Blust, Hilton, and Randleman. Staff persons present included Barbara Riley, Greg Roney, Wendy Ray and Gayle Moses. The Agenda sheet is attached and incorporated into these minutes as **attachment 1**.

Chairwoman Howard called the meeting to order at 10:10 am and recognized the members, staff and Sergeant at Arms, Reggie Sills and Bill Bass, that were present.

Chairwoman Howard recognizes Gayle Moses, of the Bill Drafting, to proceed with her presentation entitled **Bill Draft 2011-LMf-123D [v.12] (11/17)** (see **attachment 2**). Gayle went through all of the changes that had been made in the bill (see **attachment 3**).

Chairwoman Howard then opened it up for questions from the members.

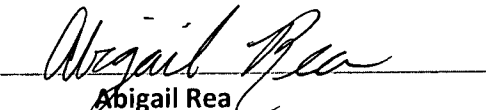
Chairwoman Howard recognized Pete Powell from the NC Courts to ask if he had any issues with the new bill.

Representative Randleman made motion for the bill to be voted on with agreed changes. The motion carried, and the bill was passed unanimously by the committee. The bill will be reported out of committee.

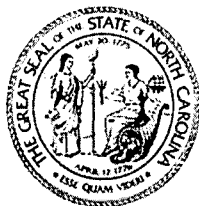
Chairwoman also introduced Barbara Riley of the Research Division to discuss the **Committee Report** (see **attachment 4**). She also discussed the one change that had to be made to the end of the report. Representative Hilton motioned that it be adopted to which the committee voted and unanimously agreed upon (see **attachment 5**).

There being no further business presently before the committee, Chairwoman Howard adjourned the meeting at 10:20 am.


Representative Julia Howard
Presiding Chair


Abigail Rea
Clerk, House Legislative Research Commission on
Orderly and Expeditious Removal by Landlord of
Personal Property of Deceased Committee

North Carolina General Assembly



Legislative Research Commission Orderly and Expeditious Removal by Landlord of Personal Property of Deceased Committee Agenda

**10am Monday February 27, 2012
Legislative Office Building, Room 421**

- 1. Opening Remarks**
Representative Julia C. Howard, Chair
- 2. Review and Approval of Report to the Legislative Research Commission.**
Committee Staff
- 3. Committee Discussion**
- 4. Instructions to Staff**

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

BILL DRAFT 2011-LMfz-123D [v.11] (11/17)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
2/24/2012 11:30:22 AM

Short Title: Deceased Tenant/Landlord Remove Property. (Public)

Sponsors: Representative Howard.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING A PROCESS WHEREBY A LANDLORD MAY REMOVE
3 FROM A RESIDENTIAL DWELLING UNIT TANGIBLE PERSONAL PROPERTY
4 BELONGING TO A DECEASED TENANT AFTER FILING AN AFFIDAVIT WITH
5 THE CLERK OF COURT IN THE COUNTY IN WHICH THE RESIDENTIAL
6 DWELLING UNIT IS LOCATED, AS RECOMMENDED BY THE LEGISLATIVE
7 RESEARCH COMMISSION ORDERLY AND EXPEDITIOUS REMOVAL BY
8 LANDLORD OF PERSONAL PROPERTY OF DECEASED COMMITTEE.

9 The General Assembly of North Carolina enacts:

10 SECTION 1. Article 25 of Chapter 28A of the General Statutes is amended by
11 adding a new section to read as follows:

12 "§ 28A-25-1.2. Removal of tangible personal property by landlord after death of
13 residential tenant.

14 (a) When a decedent who is the sole occupant of a dwelling unit dies leaving tangible
15 personal property in the dwelling unit, the landlord may take possession of the property upon
16 the filing of an affidavit that complies with the provisions of subsection (b) of this section if all
17 of the following conditions have been met:

18 (1) At least 10 days has elapsed from the date the paid rental period for the
19 dwelling unit has expired.

20 (2) No personal representative, collector, or receiver has been appointed for the
21 decedent's estate under the provisions of this Chapter, Chapter 28B, or
22 Chapter 28C of the General Statutes in the county in which the dwelling unit
23 is located.

24 (3) No affidavit related to the decedent's estate has been filed under the
25 provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1 in the county in which the
26 dwelling unit is located.

27 (b) The affidavit required by subsection (a) of this section shall be on a form approved
28 by the Administrative Office of the Courts and supplied by the clerk of court. The affidavit
29 shall state all of the following:

30 (1) The name and address of the affiant and the fact that the affiant is the lessor
31 of the dwelling unit.



* 2 0 1 1 - L M F Z - 1 2 3 D - V - 1 1 *

- (2) The name of the decedent and the fact that the decedent was the lessee of the dwelling unit and died leaving tangible personal property in the dwelling unit. The affiant shall attach to the affidavit a copy of the decedent's death certificate.
- (3) The address of the dwelling unit.
- (4) The date of the decedent's death.
- (5) The date the paid rental period expired and the fact that at least 10 days has elapsed since that date.
- (6) The affiant's good faith estimate of the value of the tangible personal property remaining in the dwelling unit. The affiant shall attach to the affidavit an inventory of the property which shall include, at a minimum, the categories of furniture, clothing and accessories, and miscellaneous items.
- (7) That no personal representative, collector, or receiver has been appointed for the decedent's estate under the provisions of this Chapter, Chapter 28B, or Chapter 28C of the General Statutes in the county in which the dwelling unit is located and that no affidavit has been filed in the county under the provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1.
- (8) The name of the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant; that the affiant has made a good faith attempt to contact that person to urge that action be taken to administer the decedent's estate; and that either the affiant was unsuccessful in contacting the person or, if contacted, the person has not taken action to administer the decedent's estate. The affiant shall state the efforts made to contact the person identified in the rental application, lease agreement, or other landlord document.

(c) The affidavit shall be filed in the office of the clerk of court in the county in which the dwelling unit is located. The affidavit shall be filed by the clerk upon the landlord's payment of the fee of thirty dollars (\$30.00) and shall be indexed in the index to estates. The landlord shall mail a copy of the affidavit to the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant. If no contact person is identified in the rental application, lease agreement, or other landlord document, the landlord shall cause notice of the filing of the affidavit to be posted at the door of the landlord's primary rental office or the place where the landlord conducts business and at the county courthouse in the area designated by the clerk for the posting of notices.

(d) The filing of an affidavit that complies with the provisions of subsection (b) of this section shall be sufficient to require the transfer of the property remaining in the decedent's dwelling unit to the landlord. Upon the transfer, the landlord may remove the property from the dwelling unit and deliver it for storage to any storage warehouse in the county in which the dwelling unit is located or in an adjoining county if no storage warehouse is located in that county. The landlord may also store the property in the landlord's own storage facility. Notwithstanding any provision of Chapter 42 of the General Statutes, after removing the property from the dwelling unit as provided in this subsection, the landlord shall be in possession of the dwelling unit and may let the unit as the landlord deems fit.

(e) If, at least 90 days after the landlord filed the affidavit required by subsection (a) of this section, no personal representative, collector, or receiver has been appointed under the provisions of this Chapter, Chapter 28B, or Chapter 28C of the General Statutes in the county in which the dwelling unit is located and no affidavit has been filed in the county under the

provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1, the landlord may take any of the following actions related to the decedent's property:

(1) Sell the property as provided in subsection (f) of this section.

(2) Deliver the property into the custody of a nonprofit organization regularly providing free, or at a nominal price, clothing and household furnishings to people in need for disposition in the normal course of the organization's operations. The organization shall not be liable to anyone for the disposition of the property.

(f) If the landlord delivers the property to a nonprofit organization as authorized in subdivision (e)(2) of this section, the landlord shall provide an accounting to the clerk stating the nature of the action and the date on which the action was taken. A landlord who elects to sell the property as authorized in subdivision (e)(1) of this section may do so at a public or private sale. Whether the sale is public or private, the landlord shall, at least seven days prior to the day of sale, give written notice to the clerk and post written notice of the sale in the area designated by the clerk for the posting of notices and at the door of the landlord's primary rental office or the place where the landlord conducts business stating the date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment of unpaid rents, damages, packing and storage fees, filing fees, and sale costs shall be delivered to the clerk. The landlord may apply the proceeds of the sale to the unpaid rents, damages, packing and storage fees, filing fees, and sale costs. Any surplus from the sale shall be paid to the clerk and the landlord shall provide an accounting to the clerk showing the manner in which the proceeds of the sale were applied. The clerk shall administer the funds in the same manner as provided in G.S. 28A-25-6.

(g) If, at any time after the landlord files the affidavit required by subsection (a) of this section but before the landlord takes any of the actions authorized in subsection (e) of this section, the landlord is presented with letters of appointment or another document issued by a court indicating that a personal representative, collector, or receiver has been appointed for the decedent's estate or an affidavit filed under the provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1, the landlord shall deliver the decedent's property to the personal representative, collector, or receiver appointed or to the person who filed the affidavit.

(h) Notwithstanding the provisions of subsections (a) through (g) of this section, if the decedent dies leaving tangible personal property of five hundred dollar (\$500.00) value or less in the dwelling unit, the landlord may, without filing an affidavit, deliver the property into the custody of a nonprofit organization regularly providing free, or at a nominal price, clothing and household furnishings to people in need upon that organization agreeing to identify and separately store the property for 30 days and to release the property to a person authorized by law to act on behalf of the decedent at no charge within the 30-day period. Prior to delivering the property to the nonprofit organization, the landlord shall prepare an inventory of the property which shall include, at a minimum, the categories of furniture, clothing and accessories, and miscellaneous items. A landlord electing to act under this subsection shall immediately send a notice by first-class mail containing the name and address of the property recipient and a copy of the inventory to the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant and shall post the same notice for 30 days or more at the door of the landlord's primary rental office or the place where the landlord conducts business. The notice posted shall not include an inventory of the property. Any nonprofit organization agreeing to receive personal property under this subsection shall not be liable to the decedent's estate for the disposition of the property provided that the property has been separately identified and stored for release to a person authorized by law to act on behalf of the decedent for a period of 30 days.

(i) If any lessor, landlord, or agent seizes possession of the decedent's tangible personal property in any manner not in accordance with the provisions of this section, any person authorized by law to act on behalf of the decedent shall be entitled to recover possession of the property or compensation for the value of the property and, in any action brought by any person authorized by law to act on behalf of the decedent, the landlord shall be liable to the decedent's estate for actual damages, but not including punitive damages, treble damages, or damages for emotional distress.

(j) It is the intent of the General Assembly that the procedure authorized in this section may be used as an alternative to a summary ejectment action under Chapter 42 of the General Statutes. A landlord shall, in his or her discretion, determine whether to proceed under the provisions of this section or under Chapter 42 of the General Statutes. "

SECTION 2. G.S. 42-25.7 reads as rewritten:

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

It is the public policy of the State of North Carolina that distress and distraint are prohibited and that landlords of residential rental property shall have rights concerning the personal property of their residential tenants only in accordance with G.S. 42-25.9(d), 42-25.9(g), 42-25.9(h), ~~or 42-36.2~~, 42-36.2, or 28A-25-1.2."

SECTION 3. Article 3 of Chapter 42 of the General Statutes is amended by adding a new section to read as follows:

"§ 42-36.3. Death of residential tenant; landlord may file affidavit to remove personal property from the dwelling unit.

Notwithstanding any other provision of this Chapter, when a decedent who is the sole occupant of a dwelling unit dies leaving tangible personal property in the dwelling unit, the landlord may, instead of commencing a summary ejectment action, file an affidavit as provided in G.S. 28A-25-1.2."

SECTION 4. This act becomes effective October 1, 2012.

Abigail Rea (Rep. Julia Howard)

From: Gayle Moses (Bill Drafting)
Sent: Friday, February 24, 2012 12:05 PM
To: Rep. Julia Howard; Rep. John M. Blust; Rep. Kelly Hastings; Rep. Mark Hilton; Rep. Tim Moore; Rep. Shirley B. Randleman; Rep. Sarah Stevens
Cc: Barbara Riley (Research); Greg Roney (Research); 'colleen@kochaneklawgroup.com'; 'Kim Crouch (kcrouch@NCBAR.ORG)'; 'efoy@wyrick.com'; 'barbara.d.moore@nccourts.org'; 'pete.e.powell@nccourts.org'; Abigail Rea (Rep. Julia Howard); Wendy Graf Ray (Research)
Subject: REVISED DECEASED TENANT BILL - 2/24/2011
Attachments: c:\Users\gaylem\NCGA Application Data\GARDS\PDFs\2011-LMfz-123D.pdf
Importance: High

Attached is a revised draft of the deceased tenant bill. It includes the changes requested during the Feb 19 meeting, and some additional changes requested by Representative Howard. Representative Howard requests that you review the draft before the meeting on Monday. If you have any questions about the draft, please email me (please copy other committee members). The changes from the Feb 19 meeting can be found as follows:

- 1) Page 2, lines 10-12– requiring the affiant to provide an inventory with the affidavit
- 2) Page 2, lines 34-36, adding the requirement that the landlord post notice of the filing of the affidavit at the place where the landlord conducts business and at the courthouse
- 3) Page 2, lines 37-42 – clarifying that the filing of an affidavit that meets the statutory requirements is sufficient to require the transfer of the deceased tenant's property to the landlord.
- 4) Page 3, lines 15-16 (adding same posting requirements as in #2 above).

The changes requested since the Feb 19 meeting can be found as follows:

- 1) Page 1, line 5 (and in other places in the bill) – the phrase “clerk of superior court” has been changed to “clerk of court”
- 2) Page 1, line 14 and Page 4, lines 22-23, the phrase “sole tenant named in a residential lease” has been changed to “sole occupant of a dwelling unit”
- 3) Page 2, lines 3-4, a sentence has been added requiring the affiant to attach to the affidavit a copy of the decedent's death certificate.
- 4) Page 3, lines 31-50, adds a new subsection to clarify that a landlord may, without filing an affidavit, deliver property valued at \$500 or less to a charity that agrees to hold the property for 30 days. The landlord must conduct an inventory of the property before delivering it to the charity and must provide the emergency contact person with a copy of the inventory.
- 5) Page 4, lines 1-7, includes remedies section under new deceased tenant section rather than in Chapter 42.
- 6) Page 4, lines 8-11, clarifies that the affidavit procedure is an alternative to summary judgment; landlord has discretion to determine which alternative to use.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601



February 20, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased. This report was prepared by the Legislative Research Commission's Committee on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased pursuant to G.S. 120-30.17(1).

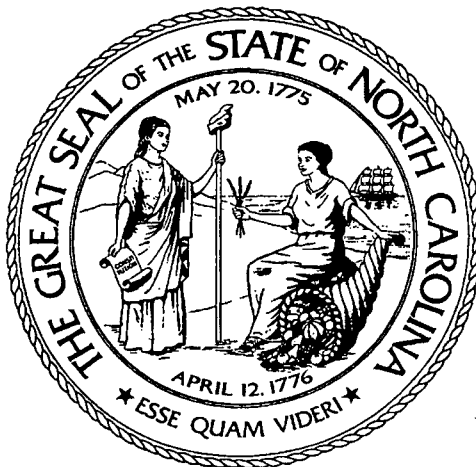
Representative Julia C. Howard

Chair
Committee on Orderly and Expeditious Removal by
Landlord of Personal Property of Deceased
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

**ORDERLY AND EXPEDITIOUS REMOVAL BY
LANDLORD OF PERSONAL PROPERTY OF
DECEASED COMMITTEE**

NORTH CAROLINA GENERAL ASSEMBLY



**REPORT TO THE
2012 SESSION
of the
2011 GENERAL ASSEMBLY
OF NORTH CAROLINA**

*Orderly and Expeditious Removal by Landlord
Of Personal Property of Deceased*

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*Orderly and Expeditious Removal by Landlord
Of Personal Property of Deceased*

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FINDING AND RECOMMENDATIONS.....	10

APPENDICES

APPENDIX A

RELEVANT PORTIONS OF THE LETTER
FROM THE SPEAKER OF THE HOUSE
AUTHORIZING THIS STUDY.

APPENDIX B

MEMBERSHIP OF THE LRC COMMITTEE ON ORDERLY AND
EXPEDITIOUS REMOVAL BY LANDLORD OF PERSONAL PROPERTY
OF DECEASED.

APPENDIX C

LEGISLATIVE PROPOSAL I – A BILL TO BE ENTITLED
AN ACT ESTABLISHING A PROCESS WHEREBY
A LANDLORD MAY REMOVE FROM A RESIDENTIAL DWELLING
UNIT TANGIBLE PERSONAL PROPERTY BELONGING TO A
DECEASED TENANT AFTER FILING AN AFFIDAVIT WITH
THE CLERK OF SUPERIOR COURT IN THE COUNTY IN
WHICH THE RESIDENTIAL DWELLING UNIT IS
LOCATED, AS RECOMMENDED BY THE LEGISLATIVE
RESEARCH COMMISSION ORDERLY AND EXPEDITIOUS
REMOVAL BY LANDLORD OF PERSONAL PROPERTY
OF DECEASED COMMITTEE.

TRANSMITTAL LETTER

May 16, 2012

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Philip E. Berger
President Pro Tempore of the Senate

Representative Thomas R. Tillis
Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

President Pro Tempore of the Senate

Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives

Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

Preface

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of **Orderly and Expeditious Removal by Landlord of Personal Property of Deceased** under authority of G.S. 120-30.17(1). The authorization provides that the Committee may recommend changes to the General Statutes to provide for the orderly and expeditious removal by a landlord of the personal property of a deceased tenant where the heirs are not readily identifiable or available to take possession of that personal property. The letter of authorization from the Speaker of the House of Representatives, Thom Tillis, is included in Appendix A of this Report. The Committee was chaired by **Representative Julia C. Howard**. The full membership of the Committee is listed in Appendix B. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased met 3 times after the 2011 Regular Session. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

The Committee held its initial meeting on November 17, 2011. Representative Julia Howard welcomed members of the Committee and visitors. Committee Staff reviewed the charge to the Committee and outlined the budget for the Committee's work.

The first presenter was Mr. William Brownlee of the North Carolina Apartment Association. Mr. Brownlee outlined the problems faced by landlords regarding the disposition of a tenant's property where a tenant had died without readily identifiable next of kin or persons available or qualified to open an estate. Existing statutes do not address this situation. As a result, it may take months before a landlord is able to remove the deceased tenant's personal property from the dwelling unit and put the unit back on the market. Mr. Greg Roney, Committee Counsel, offered some potential solutions to the issues presented. The Committee had an extensive discussion of the issue. Comments were also received from Ms. Elinor Foy with Wyrick, Robbins, Yates, and Ponton, and member of the Estate Planning and Fiduciary Law Section of the North Carolina Bar Association and Ms. Kim Crouch, Director of Governmental Affairs, North Carolina Bar Association. Representative Howard asked that Ms. Foy and Ms. Crouch work with the North Carolina Apartment Association and Committee Staff to draft legislation to provide landlords with a statutory procedure for expediting the removal and storage of a deceased tenant's personal property.

At the second meeting, January 19, 2012, Gayle Moses, Committee Counsel, presented the proposed legislation that resulted from the discussions of the stakeholders. The draft set forth a procedure allowing a landlord to take possession of and remove the personal property from a dwelling unit upon the filing of an affidavit with the Clerk of Superior Court that establishes that ten days have passed since the last paid rental period ended, no person has applied to act as the personal representative for the estate, and no affidavit has been filed regarding the estate under Article 25 of Chapter 28 of the General Statutes (Small Estates). The landlord must store the property for a period of 90 days after which time the property may be sold or delivered to a nonprofit organization. Extensive discussion ensued and a number of amendments were made to the proposed legislation. Mr. Peter E. Powell, Legal Counsel to the North Carolina Administrative Office of the Courts spoke to the Committee about a number of concerns with the proposed legislation and there was extensive Committee discussion. At the conclusion of

the meeting Committee staff was instructed to incorporate several amendments into the proposed legislation and to present the revised draft for approval at its next meeting.

The Committee held its third meeting on February 20, 2012. At the meeting, the Committee voted to recommend the proposed legislation (Legislative Proposal I) to the Legislative Research Commission and adopted this report.

DRAFT

FINDINGS AND RECOMMENDATIONS

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The Legislative Study Committee on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased finds that a small number of tenants die in North Carolina without immediate family or others willing to administer a decedent's estate. Landlords, especially commercial landlords renting residential apartment units, do not have a clear and time-efficient statutory procedure to regain possession of a rental unit after the death of the tenant without someone available to administer his or her estate and dispose of the deceased tenant's property.

To implement the above finding, the Legislative Study Committee on Orderly and Expeditious Removal by Landlord of Personal Property of Deceased Committee recommends the adoption of a new estate administration procedure that gives landlords statutory authority to regain possession of a dwelling unit and dispose of the personal property of the deceased tenant as set forth in Appendix C as **Legislative Proposal I:**
A BILL TO BE ENTITLED AN ACT ESTABLISHING A PROCESS WHEREBY A LANDLORD MAY REMOVE FROM A RESIDENTIAL DWELLING UNIT TANGIBLE PERSONAL PROPERTY BELONGING TO A DECEASED TENANT AFTER FILING AN AFFIDAVIT WITH THE CLERK OF SUPERIOR COURT IN THE COUNTY IN WHICH THE RESIDENTIAL DWELLING UNIT IS LOCATED, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION ORDERLY AND EXPEDITIOUS REMOVAL BY LANDLORD OF PERSONAL PROPERTY OF DECEASED COMMITTEE.

COMMITTEE AUTHORIZATION

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Office of the Speaker
North Carolina House of Representatives
Raleigh, North Carolina 27601-1096

THOM TILLIS
SPEAKER

September 12, 2011

Representative Tim Moore
Chairman
Legislative Research Commission
North Carolina House of Representatives
16 W. Jones Street, Room 1326
Raleigh, NC 27601-1096

Dear Representative Moore:

As you prepare your agenda for the Legislative Research Commission (the "Commission"), pursuant to G.S. 120-30.17, I hereby authorize the Commission to appoint subcommittees to study the following matters during the interim. House appointees to each study committee are also identified. Please restrict each study committee to a maximum of four meetings unless additional meetings are pre-approved by my office.

....

Studies Approved for the House:

....

4. Orderly and Expeditious Removal by Landlord of Personal Property of Deceased

The Committee may recommend changes to the General Statutes to provide for the orderly and expeditious removal by a landlord of the personal property of a deceased tenant where the heirs are not readily identifiable or available to take possession of that personal property.

Chair: Howard

Members: T. Moore, Blust, Hastings, Stevens, Hilton, Randleman

I will look forward to reviewing the Commission's report regarding the study results, as well as any recommended legislation, prior to convening of the 2012 short session. Please let me know if my staff or I may be of assistance.

Thank you for your service.

Best regards,

A handwritten signature in cursive script that reads "Thom Tillis". The signature is written in dark ink and is positioned above the printed name.

Thom Tillis

COMMITTEE MEMBERSHIP

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2011-2012

Representative Julia Craven Howard, Chair
Representative John M. Blust
Representative Kelly E. Hastings
Representative Mark K. Hilton
Representative Shirley B. Randleman
Representative Timothy Keith Moore
Representative Sarah S. Stevens

APPENDIX C

LEGISLATIVE PROPOSAL

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LEGISLATIVE PROPOSAL I
GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

BILL DRAFT 2011-LMfz-123C [v.15] (11/17)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/20/2012 1:53:54 PM

Short Title: Deceased Tenant/Landlord Remove Property. (Public)

Sponsors: Representative Howard.

Referred to:

A BILL TO BE ENTITLED
AN ACT ESTABLISHING A PROCESS WHEREBY A LANDLORD MAY REMOVE FROM A RESIDENTIAL DWELLING UNIT TANGIBLE PERSONAL PROPERTY BELONGING TO A DECEASED TENANT AFTER FILING AN AFFIDAVIT WITH THE CLERK OF SUPERIOR COURT IN THE COUNTY IN WHICH THE RESIDENTIAL DWELLING UNIT IS LOCATED, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION ORDERLY AND EXPEDITIOUS REMOVAL BY LANDLORD OF PERSONAL PROPERTY OF DECEASED COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 25 of Chapter 28A of the General Statutes is amended by adding a new section to read as follows:

"§ 28A-25-1.2. Removal of tangible personal property by landlord after death of residential tenant.

(a) When a decedent who is the sole tenant named in a residential lease dies leaving tangible personal property in the dwelling unit, the landlord may take possession of the property upon the filing of an affidavit that complies with the provisions of subsection (b) of this section if all of the following conditions have been met:

- (1) At least 10 days has elapsed from the date the paid rental period for the dwelling unit has expired.
- (2) No personal representative, collector, or receiver has been appointed for the decedent's estate under the provisions of this Chapter, Chapter 28B, or Chapter 28C of the General Statutes in the county in which the dwelling unit is located.

(3) No affidavit related to the decedent's estate has been filed under the provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1 in the county in which the dwelling unit is located.

(b) The affidavit required by subsection (a) of this section shall be on a form approved by the Administrative Office of the Courts and supplied by the clerk of superior court. The affidavit shall state all of the following:

(1) The name and address of the affiant and the fact that the affiant is the lessor of the dwelling unit.

(2) The name of the decedent and the fact that the decedent was the lessee of the dwelling unit and died leaving tangible personal property in the dwelling unit.

(3) The address of the dwelling unit.

(4) The date of the decedent's death.

(5) The date the paid rental period expired and the fact that at least 10 days has elapsed since that date.

(6) The affiant's good faith estimate of the value of the tangible personal property remaining in the dwelling unit. The affiant shall attach to the affidavit an inventory of the property which shall include, at a minimum, the categories of furniture, clothing and accessories, and miscellaneous items.

(7) That no personal representative, collector, or receiver has been appointed for the decedent's estate under the provisions of this Chapter, Chapter 28B, or Chapter 28C of the General Statutes in the county in which the dwelling unit is located and that no affidavit has been filed in the county under the provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1.

(8) The name of the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant; that the affiant has made a good faith attempt to contact that person to urge that action be taken to administer the decedent's estate; and that either the affiant was unsuccessful in contacting the person or, if contacted, the person has not taken action to administer the decedent's estate. The affiant shall state the efforts made to contact the person identified in the rental application, lease agreement, or other landlord document.

(c) The affidavit shall be filed in the office of the clerk of superior court in the county in which the dwelling unit is located. The affidavit shall be filed by the clerk upon the landlord's payment of the fee of thirty dollars (\$30.00) and shall be indexed in the index to estates. The landlord shall mail a copy of the affidavit to the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant. If no contact person is identified in the rental

application, lease agreement, or other landlord document, the landlord shall cause notice of the filing of the affidavit to be posted at the door of the landlord's primary rental office or the place where the landlord conducts business and at the county courthouse in the area designated by the clerk for the posting of notices.

(d) The filing of an affidavit that complies with the provisions of subsection (b) of this section shall be sufficient to require the transfer of the property remaining in the decedent's dwelling unit to the landlord. Upon the transfer, the landlord may remove the property from the dwelling unit and deliver it for storage to any storage warehouse in the county in which the dwelling unit is located or in an adjoining county if no storage warehouse is located in that county. The landlord may also store the property in the landlord's own storage facility. Notwithstanding any provision of Chapter 42 of the General Statutes, after removing the property from the dwelling unit as provided in this subsection, the landlord shall be in possession of the dwelling unit and may let the unit as the landlord deems fit, subject to the requirements of Chapter 42 of the General Statutes.

(e) If, at least 90 days after the landlord filed the affidavit required by subsection (a) of this section, no personal representative, collector, or receiver has been appointed under the provisions of this Chapter, Chapter 28B, or Chapter 28C of the General Statutes in the county in which the dwelling unit is located and no affidavit has been filed in the county under the provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1, the landlord may take any of the following actions related to the decedent's property:

- (1) Sell the property as provided in subsection (f) of this section.
- (2) Deliver the property into the custody of a nonprofit organization regularly providing free, or at a nominal price, clothing and household furnishings to people in need for disposition in the normal course of the organization's operations. The organization shall not be liable to anyone for the disposition of the property.

(f) If the landlord delivers the property to a nonprofit organization as authorized in subdivision (e)(2) of this section, the landlord shall provide an accounting to the clerk stating the nature of the action and the date on which the action was taken. A landlord who elects to sell the property as authorized in subdivision (e)(1) of this section may do so at a public or private sale. Whether the sale is public or private, the landlord shall, at least seven days prior to the day of sale, give written notice to the clerk and post written notice of the sale in the area designated by the clerk for the posting of notices and at the door of the landlord's primary rental office or the place where the landlord conducts business stating the date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment of unpaid rents, damages, packing and storage fees, filing fees, and sale costs shall be delivered to the clerk. The landlord may apply the proceeds of the sale to the unpaid rents, damages, packing and storage fees, filing fees, and sale costs. Any surplus from the sale shall be paid to the clerk and the

landlord shall provide an accounting to the clerk showing the manner in which the proceeds of the sale were applied. The clerk shall administer the funds in the same manner as provided in G.S. 28A-25-6.

(g) If, at any time after the landlord files the affidavit required by subsection (a) of this section but before the landlord takes any of the actions authorized in subsection (e) of this section, the landlord is presented with letters of appointment or another document issued by a court indicating that a personal representative, collector, or receiver has been appointed for the decedent's estate or an affidavit filed under the provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1, the landlord shall deliver the decedent's property to the personal representative, collector, or receiver appointed or to the person who filed the affidavit."

SECTION 2. G.S. 42-25.7 reads as rewritten:

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

It is the public policy of the State of North Carolina that distress and distraint are prohibited and that landlords of residential rental property shall have rights concerning the personal property of their residential tenants only in accordance with G.S. 42-25.9(d), 42-25.9(g), 42-25.9(h), or ~~42-36.2~~ 42-36.2, or 28A-25-1.2."

SECTION 3. G.S. 42-25.9 reads as rewritten:

"§ 42-25.9. Remedies.

...
(b1) If, after the death of a tenant who is the sole person named in a residential lease, any lessor, landlord, or agent seizes possession of the deceased tenant's tangible personal property remaining in the dwelling unit in any manner not in accordance with G.S. ~~28A-25-1.2~~, any person authorized by law to act on behalf of the deceased tenant shall be entitled to recover possession of the personal property or compensation as authorized in subsection (b) of this section.

...
(d) If any tenant abandons personal property of five hundred dollar (\$500.00) value or less in the demised premises, or fails to remove such property at the time of execution of a writ of possession in an action for summary ejectment, the landlord may, as an alternative to the procedures provided in G.S. 42-25.9(g), 42-25.9(h), or ~~42-36.2~~ 42-36.2, or 28A-25-1.2, deliver the property into the custody of a nonprofit organization regularly providing free or at a nominal price clothing and household furnishings to people in need, upon that organization agreeing to identify and separately store the property for 30 days and to release the property to the tenant at no charge within the 30-day period. A landlord electing to use this procedure shall immediately post at the demised premises a notice containing the name and address of the property recipient, post the same notice for 30 days or more at the place where rent is received, and send the same notice by first-class mail to the tenant at the tenant's last known address. Provided, however, that the notice shall not include a description of the property.

...."

SECTION 4. This act becomes effective October 1, 2012.



the meeting Committee staff was instructed to incorporate several amendments into the proposed legislation and to present the revised draft for approval at its next meeting.

The Committee held its third meeting on February 27, 2012. At the meeting, the Committee considered further amendments to the proposed legislation. The Committee then voted to recommend the amended proposal to the Legislative Research Commission (Legislative Proposal I) and to adopt this report.