

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1995

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HOUSE BILL 899
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Short Title: Landlord/Tenant Changes. (Public)

Sponsors:

Referred to:

April 12, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR DISPOSAL OF UNCLAIMED PROPERTY BY
3 LANDLORDS, TO AMEND THE LAW OF SUMMARY EJECTMENT BY
4 REDUCING THE TIME ALLOWED FOR A DEFENDANT TO APPEAR IN
5 COURT, AND TO PROVIDE FOR THE EXECUTION OF JUDGMENTS FOR
6 POSSESSION THAT ARE MORE THAN THIRTY DAYS OLD.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 42-25.9 is amended by adding two new subsections to read:

9 "(g) Ten days after being placed in lawful possession by execution of a writ of
10 possession, a landlord may throw away, dispose of, or sell all items of personal property
11 remaining on the premises. During the 10-day period after being placed in lawful
12 possession by execution of a writ of possession, a landlord may move for storage
13 purposes, but shall not throw away, dispose of, or sell any items of personal property
14 remaining on the premises unless otherwise provided for in this Chapter. Upon the
15 tenant's request prior to the expiration of the 10-day period, the landlord shall release
16 possession of the property to the tenant during regular business hours or at a time agreed
17 upon. If the landlord elects to sell the property at public or private sale, the landlord shall
18 give written notice to the tenant by first-class mail to the tenant's last known address at

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

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

20 Sec. 2. G.S. 42-25.9(b) reads as rewritten:

21 "(b) If any lessor, landlord, or agent seizes possession of or interferes with a
22 tenant's access to a tenant's or household member's personal property in any manner not
23 in accordance with G.S. 44A-2(e) or 42-25.9(d), ~~G.S. 44A-2(e) or 42-25.9(d), G.S. 42-~~
24 ~~25.9(d), 42-25.9(g), 42-25.9(h), or 42-36.2~~ the tenant or household member shall be
25 entitled to recover possession of his personal property or compensation for the value of
26 the personal property, and, in any action brought by a tenant or household member under
27 this Article, the landlord shall be liable to the tenant or household member for actual
28 damages, but not including punitive damages, treble damages or damages for emotional
29 distress."

30 Sec. 3. G.S. 42-25.9(d) reads as rewritten:

31 "(d) If any tenant abandons personal property of five hundred dollar (\$500.00)
32 value or less in the demised premises, or fails to remove such property at the time of
33 execution of a writ of possession in an action for summary ejectment, the landlord may,
34 as an alternative to the procedures provided in ~~G.S. 42-36.2 or G.S. 44A-2(e), G.S. 42-~~
35 ~~25.9(g), 42-25.9(h), or 42-36.2~~, deliver the property into the custody of a nonprofit
36 organization regularly providing free or at a nominal price clothing and household
37 furnishings to people in need, upon that organization agreeing to identify and separately
38 store the property for 30 days and to release the property to the tenant at no charge within
39 the 30-day period. A landlord electing to use this procedure shall immediately post at the
40 demised premises a notice containing the name and address of the property recipient, post
41 the same notice for 30 days or more at the place where rent is received, and send the
42 same notice by first-class mail to the tenant at the tenant's last known address. Provided,
43 however, that the notice shall not include a description of the property."

1 Sec. 4. G.S. 42-28 reads as rewritten:

2 **"§ 42-28. Summons issued by clerk.**

3 When the lessor or his assignee files a complaint pursuant to G.S. 42-26 or 42-27, and
4 asks to be put in possession of the leased premises, the clerk of superior court shall issue
5 a summons requiring the defendant to appear at a certain time and place not to exceed ~~to~~
6 seven days from the issuance of the summons, ~~summons, excluding weekends and legal~~
7 holidays, to answer the complaint. The plaintiff may claim rent in arrears, and damages
8 for the occupation of the premises since the cessation of the estate of the lessee, not to
9 exceed the jurisdictional amount established by G.S. 7A-210(1), but if he omits to make
10 such claim, he shall not be prejudiced thereby in any other action for their recovery."

11 Sec. 5. G.S. 42-29 reads as rewritten:

12 **"§ 42-29. Service of summons.**

13 The officer receiving the summons shall mail a copy of the summons and complaint
14 to the defendant ~~no later than the end of the next business day or as soon as practicable~~ at
15 his~~the defendant's~~ last known address in a stamped addressed envelope provided by the
16 plaintiff to the action. The officer ~~may~~may, ~~within five days of the issuance of the~~
17 summons, attempt to telephone the defendant requesting that the defendant either
18 personally visit the officer to accept service, or schedule an appointment for the
19 defendant to receive delivery of service from the officer. If the officer does not attempt
20 to telephone the defendant or the attempt is ~~unsuccessful~~, unsuccessful or does not result
21 in service to the defendant, the officer shall make at least one visit to the place of abode
22 of the defendant ~~within five days of the issuance of the summons~~ at a time reasonably
23 calculated to find the defendant at the place of abode to attempt personal delivery of
24 service. He then shall deliver a copy of the summons together with a copy of the
25 complaint to the defendant, or leave copies thereof at the defendant's dwelling house or
26 usual place of abode with some person of suitable age and discretion then residing
27 therein. If such service cannot be made the officer shall affix copies to some conspicuous
28 part of the premises claimed and make due return showing compliance with this section."

29 Sec. 6. G.S. 42-36.2 reads as rewritten:

30 **"§ 42-36.2. Notice to tenant of execution of writ for possession of property; storage**
31 **of evicted tenant's personal property.**

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

39 (1) The landlord, or his authorized agent, signs a statement saying that the
40 tenant's property can remain on the premises, in which case the sheriff
41 shall simply lock the premises; or

42 (2) The landlord, or his authorized agent, signs a statement saying that the
43 landlord does not want to eject the tenant because the tenant has paid all

court costs charged to him and has satisfied his indebtedness to the landlord.

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

10 (b) Sheriff May Store Property. – When the sheriff removes the personal property
11 of an evicted tenant from demised premises pursuant to a writ or order the tenant shall
12 take possession of his property. If the tenant fails or refuses to take possession of his
13 property, the sheriff may deliver the property to any storage warehouse in the county, or
14 in an adjoining county if no storage warehouse is located in that county, for storage. The
15 sheriff may require the landlord to advance the cost of delivering the property to a storage
16 warehouse plus the cost of one month's storage before delivering the property to a storage
17 warehouse. If a landlord refuses to advance these costs when requested to do so by the
18 sheriff, the sheriff shall not remove the tenant's property, but shall return the writ
19 unexecuted to the issuing clerk of court with a notation thereon of his reason for not
20 executing the writ. Within 10 days of the landlord's being placed in lawful possession by
21 execution of a writ of possession and upon the tenant's request within that 10-day period,
22 the landlord shall release possession of the property to the tenant during regular business
23 hours or at a time agreed upon. During the 10-day period after being placed in lawful
24 possession by execution of a writ of possession, a landlord may move for storage
25 purposes, but shall not throw away, dispose of, or sell any items of personal property
26 remaining on the premises unless otherwise provided for in this Chapter. After the
27 expiration of the 10-day period, the landlord may throw away, dispose of, or sell the
28 property in accordance with the provisions of G.S. 42-25.9(g). AllIf the tenant does not
29 request release of the property within 10 days, all costs of summary ejectment, execution
30 and storage proceedings shall be charged to the tenant as court costs and shall constitute a
31 lien against the stored property or a claim against any remaining balance of the proceeds
32 of a warehouseman's lien sale.

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

37 (d) Notice. – The notice required by subsection (a) shall inform the tenant that
38 failure to request possession of any property on the premises within 10 days of execution
39 may result in the property being thrown away, disposed of, or sold. Notice shall be made
40 by one of the following methods:

- 1 (2) By leaving a copy of the notice at the tenant's dwelling or usual place of
2 abode with a person of suitable age and discretion who resides there at
3 least two days before the time stated in the notice for serving the writ; or
4 (3) By mailing a copy of the notice by first-class mail to the tenant at his
5 last known address at least five days before the time stated in the notice
6 for serving the writ."

7 Sec. 7. Article 3 of Chapter 42 of the General Statutes is amended by adding a
8 new section to read:

9 **"§ 42-36.1A. Judgments for possession more than 30 days old.**

10 Prior to obtaining execution of a judgment that has been entered for more than 30
11 days for possession of demised premises, a landlord shall sign an affidavit stating that the
12 landlord has neither entered into a formal lease with the defendant nor accepted rental
13 money from the defendant for any period of time after entry of the judgment."

14 Sec. 8. G.S 42-25.7 reads as rewritten:

15 **"§ 42-25.7. Distress and distress not permitted.**

16 It is the public policy of the State of North Carolina that distress and distress are
17 prohibited and that landlords of residential rental property shall have security interests or
18 liens on rights concerning the personal property of their residential tenants only in
19 accordance with G.S. 44A-2(e), G.S. 42-25.9(d), 42-25.9(g), 42-25.9(h), or 42-36.2."

20 Sec. 9. G.S. 44A-2(e) reads as rewritten:

21 "(e) Any lessor of a house, room, apartment, office, store or other nonresidential
22 demised premises has a lien on all furniture, household furnishings, trade fixtures,
23 equipment and other personal property to which the tenant has legal title and which
24 remains on the demised premises if (i) the tenant has vacated the premises for 21 or more
25 days after the paid rental period has expired, and (ii) the lessor has a lawful claim for
26 damages against the tenant. If the tenant has vacated the premises for 21 or more days
27 after the expiration of the paid rental period, or if the lessor has received a judgment for
28 possession of the premises which is executable and the tenant has vacated the premises,
29 then all property remaining on the premises may be removed and placed in storage. If the
30 total value of all property remaining on the premises is less than one hundred dollars
31 (\$100.00), then it shall be deemed abandoned five days after the tenant has vacated the
32 premises, and the lessor may remove it and may donate it to any charitable institution or
33 organization. Provided, the lessor shall not have a lien if there is an agreement between
34 the lessor or his agent and the tenant that the lessor shall not have a lien. This lien shall be
35 for the amount of any rents which were due the lessor at the time the tenant vacated the
36 premises and for the time, up to 60 days, from the vacating of the premises to the date of
37 sale; and for any sums necessary to repair damages to the premises caused by the tenant,
38 normal wear and tear excepted; and for reasonable costs and expenses of sale. The lien
39 created by this subsection shall be enforced by sale at public sale pursuant to the
40 provisions of G.S. 44A-4(e). This lien shall not have priority over any security interest in
41 the property which is perfected at the time the lessor acquires this lien."

42 Sec. 10. This act becomes effective January 1, 1996.