

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 654

Short Title: Manufactured Home Law Restoration.

(Public)

Sponsors: Senator Gulley.

Referred to: Commerce.

March 30, 1999

A BILL TO BE ENTITLED

AN ACT TO RESTORE THE PRE-1995 LAW ON DISPOSAL OF PROPERTY AND
LIENS RELATING TO MANUFACTURED HOUSING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 42.25.9(b) reads as rewritten:

"(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(e), 42-25.9(d), 42-25.9(g), 42-25.9(h), or 42-36.2 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."

Section 2. G.S. 42-25.9(g) reads as rewritten:

"(g) Ten days after being placed in lawful possession by execution of a writ of possession, a landlord may throw away, dispose of, or sell all items of personal property remaining on the premises. Except that in the case of the lease of a space for a manufactured home as defined in G.S. 143-143.9(6), G.S. 44A-2(e) shall apply to the disposition of a manufactured home by a landlord after being placed in lawful possession by execution of a writ of possession. During the 10-day period after being placed in

1 lawful possession by execution of a writ of possession, a landlord may move for storage
2 purposes, but shall not throw away, dispose of, or sell any items of personal property
3 remaining on the premises unless otherwise provided for in this Chapter. Upon the
4 tenant's request prior to the expiration of the 10-day period, the landlord shall release
5 possession of the property to the tenant during regular business hours or at a time agreed
6 upon. If the landlord elects to sell the property at public or private sale, the landlord shall
7 give written notice to the tenant by first-class mail to the tenant's last known address at
8 least seven days prior to the day of the sale. The seven-day notice of sale may run
9 concurrently with the 10-day period which allows the tenant to request possession of the
10 property. The written notice shall state the date, time, and place of the sale, and that any
11 surplus of proceeds from the sale, after payment of unpaid rents, damages, storage fees,
12 and sale costs, shall be disbursed to the tenant, upon request, within 10 days after the sale,
13 and will thereafter be delivered to the government of the county in which the rental
14 property is located. Upon the tenant's request prior to the day of sale, the landlord shall
15 release possession of the property to the tenant during regular business hours or at a time
16 agreed upon. The landlord may apply the proceeds of the sale to the unpaid rents,
17 damages, storage fees, and sale costs. Any surplus from the sale shall be disbursed to the
18 tenant, upon request, within 10 days of the sale and shall thereafter be delivered to the
19 government of the county in which the rental property is located."

20 Section 3. G.S. 42-36.2(b) reads as rewritten:

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

1 constitute a lien against the stored property or a claim against any remaining balance of
2 the proceeds of a warehouseman's lien sale."

3 Section 4. G.S. 42-36.2(d) reads as rewritten:

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

- 9 (1) By delivering a copy of the notice to the tenant or his authorized agent
10 at least two days before the time stated in the notice for serving the writ;
- 11 (2) By leaving a copy of the notice at the tenant's dwelling or usual place of
12 abode with a person of suitable age and discretion who resides there at
13 least two days before the time stated in the notice for serving the writ; or
- 14 (3) By mailing a copy of the notice by first-class mail to the tenant at his
15 last known address at least five days before the time stated in the notice
16 for serving the writ."

17 Section 5. G.S. 44A-2(e) reads as rewritten:

18 "(e) Any lessor of a space for a manufactured home as defined in G.S. 143-143.9(6)
19 or of a nonresidential demised premises has a lien on all furniture, furnishings, trade
20 fixtures, equipment and other personal property to which the tenant has legal title and
21 which remains on the demised premises if (i) the tenant has vacated the premises for 21
22 or more days after the paid rental period has expired, and (ii) the lessor has a lawful claim
23 for damages against the tenant. If the tenant has vacated the premises for 21 or more days
24 after the expiration of the paid rental period, or if the lessor has received a judgment for
25 possession of the premises which is executable and the tenant has vacated the premises,
26 then all property remaining on the premises may be removed and placed in storage. If the
27 total value of all property remaining on the premises is less than one hundred dollars
28 (\$100.00), then it shall be deemed abandoned five days after the tenant has vacated the
29 premises, and the lessor may remove it and may donate it to any charitable institution or
30 organization. Provided, the lessor shall not have a lien if there is an agreement between
31 the lessor or his agent and the tenant that the lessor shall not have a lien. This lien shall be
32 for the amount of any rents which were due the lessor at the time the tenant vacated the
33 premises and for the time, up to 60 days, from the vacating of the premises to the date of
34 sale; and for any sums necessary to repair damages to the premises caused by the tenant,
35 normal wear and tear excepted; and for reasonable costs and expenses of sale. The lien
36 created by this subsection shall be enforced by sale at public sale pursuant to the
37 provisions of G.S. 44A-4(e). This lien shall not have priority over any security interest in
38 the property which is perfected at the time the lessor acquires this lien."

39 Section 6. This act is effective when it becomes law.