

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 947  
Committee Substitute Favorable 5/17/07  
Senate Judiciary II (Criminal) Committee Substitute Adopted 7/25/07

Short Title: NC Foreclosure/Landlord Tenant Laws. (Public)

Sponsors:

Referred to:

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A NOTICE OF SALE IN FORECLOSURE PROCEEDINGS BE SENT TO CERTAIN TENANTS RESIDING IN THE PROPERTY TO BE SOLD, TO ALLOW THOSE TENANTS AFTER RECEIVING THE NOTICE TO TERMINATE THE RENTAL AGREEMENT UPON TEN DAYS' WRITTEN NOTICE TO THE LANDLORD, TO REQUIRE THAT THOSE TENANTS BE GIVEN THIRTY DAYS' NOTICE OF AN APPLICATION FOR AN ORDER FOR POSSESSION, AND TO CLARIFY THAT THE PROCEEDS IN THE AUTOMATION ENHANCEMENT AND PRESERVATION FUND MAY BE USED FOR THE PRESERVATION AND STORAGE OF PUBLIC RECORDS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 45-21.16A reads as rewritten:

"§ 45-21.16A. Contents of notice of sale.

(a) ~~The notice of sale shall—~~ Except as provided in subsection (b) of this section, the notice of sale shall include all of the following:

- (1) Describe the instrument pursuant to which the sale is held, by identifying the original mortgagors and recording data. If the record owner is different from the original mortgagors, the notice shall also list the record owner of the property, as reflected on the records of the register of deeds not more than 10 days prior to posting the notice. The notice may also reflect the owner not reflected on the records if ~~known;~~known.
- (2) Designate the date, hour and place of sale consistent with the provisions of the instrument and this ~~Article;~~Article.
- (3) Describe the real property to be sold in ~~such~~ a manner ~~as~~ that is reasonably calculated to inform the public as to what is being ~~sold,~~sold. ~~The~~ ~~which~~ description may be in general terms and may

1 incorporate by reference the description as used in the instrument  
2 containing the power of ~~sale by reference thereto.~~ sale. Any property  
3 described in the instrument containing the power of sale which is not  
4 being offered for sale should also be described in ~~such~~ a manner as to  
5 enable prospective purchasers to determine what is and what is not  
6 being offered for ~~sale;~~ sale.

7 (4) Repealed by Session Laws 1967, c. 562, s. 2.

8 (5) State the terms of the sale provided for by the instrument pursuant to  
9 which the sale is held, including the amount of the cash deposit, if any,  
10 to be made by the highest bidder at the ~~sale;~~ sale.

11 (6) Include any other provisions required by the instrument to be ~~included~~  
12 ~~therein;~~ included.

13 (7) State that the property will be sold subject to taxes and special  
14 assessments if it is to be so ~~sold;~~ and sold.

15 (8) State whether the property is being sold subject to or together with any  
16 subordinate rights or interests provided those rights and interests are  
17 sufficiently identified.

18 (b) In addition to the requirements contained in subsection (a) of this section, the  
19 notice of sale of residential real property with less than 15 rental units shall also state all  
20 of the following:

21 (1) That an order for possession of the property may be issued pursuant to  
22 G.S. 45-21.29 in favor of the purchaser and against the party or parties  
23 in possession by the clerk of superior court of the county in which the  
24 property is sold.

25 (2) Any person who occupies the property pursuant to a rental agreement  
26 entered into or renewed on or after October 1, 2007, may, after  
27 receiving the notice of sale, terminate the rental agreement upon 10  
28 days' written notice to the landlord. The notice shall also state that  
29 upon termination of a rental agreement, the tenant is liable for rent due  
30 under the rental agreement prorated to the effective date of the  
31 termination."

32 **SECTION 2.** G.S. 45-21.17(4) reads as rewritten:

33 "(4) The notice of sale shall be mailed by first-class mail at least 20 days  
34 prior to the date of sale to each party entitled to notice of the hearing  
35 provided by G.S. 45-21.16 whose address is known to the trustee or  
36 mortgagee and in addition shall also be mailed by first-class mail to  
37 any party desiring a copy of the notice of sale who has complied with  
38 G.S. 45-21.17A. If the property is residential and contains less than 15  
39 rental units, the notice of sale shall also be mailed to any person who  
40 occupies the property pursuant to a residential rental agreement by  
41 name, if known, at the address of the property to be sold. If the name  
42 of the person who occupies the property is not known, the notice shall  
43 be sent to "occupant" at the address of the property to be sold. Notice  
44 of the hearing required by G.S. 45-21.16 shall be sufficient to satisfy

1 the requirement of notice under this section provided such notice  
2 contains the information required by G.S. 45-21.16A."

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

5 **"§ 42-45.2 Early termination of rental agreement by military and tenants residing**  
6 **in certain foreclosed property.**

7 Any tenant who resides in residential real property containing less than 15 rental  
8 units that is being sold in a foreclosure proceeding under Article 2A of Chapter 45 of  
9 the General Statutes may terminate the rental agreement for the dwelling unit after  
10 receiving notice pursuant to G.S. 45-21.17(4) by providing the landlord with a written  
11 notice of termination to be effective on a date stated in the notice that is at least 10 days  
12 after the date of the notice of sale. Upon termination of a rental agreement under this  
13 section, the tenant is liable for the rent due under the rental agreement prorated to the  
14 effective date of the termination payable at the time that would have been required by  
15 the terms of the rental agreement. The tenant is not liable for any other rent or damages  
16 due only to the early termination of the tenancy."

17 **SECTION 4.** G.S. 45-21.29 reads as rewritten:

18 **"§ 45-21.29. Orders for possession.**

19 (a), (j) Repealed by Session Laws 1993, c. 305, s. 18.

20 (k) Orders for possession of real property sold pursuant to this Article, in favor of  
21 the purchaser and against any party or parties in possession at the time of application  
22 therefor, may be issued by the clerk of the superior court of the county in which ~~such~~  
23 the property is sold, when sold if all of the following apply:

- 24 (1) ~~Such~~The property has been sold in the exercise of the power of sale  
25 contained in any mortgage, deed of trust, leasehold mortgage,  
26 leasehold deed of trust, or a power of sale authorized by any other  
27 statutory ~~provisions,~~provisions.
- 28 (2) Repealed by Session Laws 1993, c. 305, s. 18.
- 29 (2a) The provisions of this Article have been complied ~~with,~~with.
- 30 (3) The sale has been consummated, and the purchase price has been  
31 ~~paid,~~paid.
- 32 (4) The purchaser has acquired title to and is entitled to possession of the  
33 real property ~~sold,~~sold.
- 34 (5) Ten days' notice has been given to the party or parties who remain in  
35 possession at the time application is made, ~~and~~or, in the case of  
36 residential property containing more than 15 rental units, 30 days'  
37 notice has been given to the party or parties who remain in possession  
38 at the time the application is made.
- 39 (6) Application is made by petition to ~~such~~the clerk by the mortgagee, the  
40 trustee, the purchaser of the property, or any ~~such person's~~authorized  
41 representativerepresentative of the mortgagee, trustee, or purchaser of  
42 the property.

43 (l) An order for possession issued pursuant to G.S. 45-21.29(k) shall be directed  
44 to the sheriff and shall authorize ~~him~~the sheriff to remove all occupants and their

1 personal property from the premises and to put the purchaser in possession, and shall be  
2 executed in accordance with the procedure for executing a writ or order for possession  
3 in a summary ejectment proceeding under G.S. 42-36.2. The purchaser shall have the  
4 same rights and remedies in connection with the execution of an order for possession  
5 and the disposition of personal property following execution as are provided to a  
6 landlord under North Carolina law, including Chapters 42 and 44A of the General  
7 Statutes.

8 (m) When the real property sold is situated in more than one county, the  
9 provisions of subsection (l) of this section shall be complied with in each county in  
10 which any part of the property is situated."

11 **SECTION 5.** G.S. 161-11.3 reads as rewritten:

12 "**§ 161-11.3. Automation Enhancement and Preservation Fund.**

13 Ten percent (10%) of the fees collected pursuant to G.S. 161-10 and retained by the  
14 county shall be set aside annually and placed in a nonreverting Automation  
15 Enhancement and Preservation Fund, the proceeds of which shall be expended on  
16 computer ~~and~~ or imaging technology and needs associated with the preservation and  
17 storage of public records in the office of the register of deeds. Nothing in this section  
18 shall be construed to affect the duty of the board of county commissioners to furnish  
19 supplies and equipment to the office of the register of deeds."

20 **SECTION 6.** This act becomes effective October 1, 2007. Section 3 of this  
21 act applies to residential rental agreements entered into or renewed on or after that date.  
22 Sections 1 and 2 apply to notices of sale issued on or after that date.