

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

4

HOUSE BILL 947
Committee Substitute Favorable 5/17/07
Senate Judiciary II (Criminal) Committee Substitute Adopted 7/25/07
Fourth Edition Engrossed 7/28/07

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

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

8 (4) Repealed by Session Laws 1967, c. 562, s. 2.

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

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

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

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

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

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

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

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

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

1 of the hearing required by G.S. 45-21.16 shall be sufficient to satisfy
2 the requirement of notice under this section provided such notice
3 contains the information required by G.S. 45-21.16A."

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

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

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

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

19 "**§ 45-21.29. Orders for possession.**

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

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

25 (1) ~~Such~~ The property has been sold in the exercise of the power of sale
26 contained in any mortgage, deed of trust, leasehold mortgage,
27 leasehold deed of trust, or a power of sale authorized by any other
28 statutory provisions, provisions.

29 (2) Repealed by Session Laws 1993, c. 305, s. 18.

30 (2a) The provisions of this Article have been complied ~~with,~~ with.

31 (3) The sale has been consummated, and the purchase price has been
32 ~~paid,~~ paid.

33 (4) The purchaser has acquired title to and is entitled to possession of the
34 real property ~~sold,~~ sold.

35 (5) Ten days' notice has been given to the party or parties who remain in
36 possession at the time application is made, ~~and or,~~ in the case of
37 residential property containing 15 or more rental units, 30 days' notice
38 has been given to the party or parties who remain in possession at the
39 time the application is made.

40 (6) Application is made by petition to ~~such the~~ clerk by the mortgagee, the
41 trustee, the purchaser of the property, or any such person's authorized
42 representative, representative of the mortgagee, trustee, or purchaser of
43 the property.

1 (l) An order for possession issued pursuant to G.S. 45-21.29(k) shall be directed
2 to the sheriff and shall authorize ~~him~~the sheriff to remove all occupants and their
3 personal property from the premises and to put the purchaser in possession, and shall be
4 executed in accordance with the procedure for executing a writ or order for possession
5 in a summary ejectment proceeding under G.S. 42-36.2. The purchaser shall have the
6 same rights and remedies in connection with the execution of an order for possession
7 and the disposition of personal property following execution as are provided to a
8 landlord under North Carolina law, including Chapters 42 and 44A of the General
9 Statutes.

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

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

14 **"§ 161-11.3. Automation Enhancement and Preservation Fund.**

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

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