

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H

1

HOUSE BILL 1070

Short Title: Property Rights and Protections. (Public)

Sponsors: Representatives Bradford, K. Hall, Biggs, and Cunningham (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary 2, if favorable, Appropriations, if favorable, Rules, Calendar, and Operations of the House

May 9, 2024

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY VARIOUS PROVISIONS REGARDING SUMMARY EJECTMENTS
3 AND OTHER SMALL CLAIMS MATTERS, TO MODIFY PROVISIONS REGARDING
4 PROPERTY CRIMES, AND TO APPROPRIATE FUNDS TO THE ADMINISTRATIVE
5 OFFICE OF THE COURTS.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. ESTABLISH THE SUMMARY EJECTMENT APPEAL PERIOD BEGINNING**
9 **WHEN A JUDGMENT IS RENDERED**

10 **SECTION 1.(a)** G.S. 7A-224 reads as rewritten:

11 **"§ 7A-224. Rendition and entry of judgment.**

12 Judgment in a small claim action is rendered in writing and signed by the ~~magistrate.~~
13 magistrate, or is rendered electronically by the magistrate. The judgment so rendered is a
14 judgment of the district court, and is recorded and indexed as are judgments of the district and
15 superior court generally. Entry is made as soon as practicable after rendition."

16 **SECTION 1.(b)** G.S. 7A-228 reads as rewritten:

17 **"§ 7A-228. New trial before magistrate; appeal for trial de novo; how appeal perfected;**
18 **oral notice; dismissal.**

19 (a) The chief district court judge may authorize magistrates to hear motions to set aside
20 an order or judgment pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a
21 magistrate. The exercise of the authority of the chief district court judge in allowing magistrates
22 to hear Rule 60(b)(1) motions shall not be construed to limit the authority of the district court to
23 hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief from
24 a judgment or order entered by a magistrate and, if granted, to order a new trial before a
25 magistrate. After final disposition before the magistrate, the sole remedy for an aggrieved party
26 is appeal for trial de novo before a district court judge or a jury. Notice of appeal may be given
27 orally in open court upon announcement or after ~~entry of judgment.~~ a judgment is rendered. If
28 not announced in open court, written notice of appeal must be filed in the office of the clerk of
29 superior court within 10 days after ~~entry of judgment.~~ a judgment is rendered. The appeal must
30 be perfected in the manner set out in subsection (b). Upon announcement of the appeal in open
31 court or upon receipt of the written notice of appeal, the appeal shall be noted upon the judgment.
32 If the judgment was mailed to the parties, then the time computations for appeal of such judgment
33 shall be pursuant to G.S. 1A-1, Rule 6.



1 (b) The appeal shall be perfected by (1) oral announcement of appeal in open court; or
 2 (2) by filing notice of appeal in the office of the clerk of superior court within 10 days after ~~entry~~
 3 ~~of a judgment is rendered~~ pursuant to subsection (a), and by serving a copy of the notice of appeal
 4 on all parties pursuant to G.S. 1A-1, Rule 5. Failure to pay the costs of court to appeal within 10
 5 days after ~~entry of a judgment is rendered~~ in a summary ejection action, and within 20 days
 6 after ~~entry of a judgment is rendered~~ in all other actions, shall result in the automatic dismissal
 7 of the appeal. Notwithstanding the foregoing deadlines, if an appealing party petitions to qualify
 8 as an indigent for the appeal and is denied, that party shall have an additional five days to perfect
 9 the appeal by paying the court costs. The failure to demand a trial by jury in district court by the
 10 appealing party before the time to perfect the appeal has expired is a waiver of the right thereto.

11 (b1) A person desiring to appeal as an indigent shall, within 10 days of ~~entry of judgment~~
 12 ~~by the magistrate, a magistrate rendering a judgment,~~ file an affidavit that ~~he or she the person~~ is
 13 unable by reason of poverty to pay the costs of appeal. Within 20 days after ~~entry of judgment, a~~
 14 ~~judgment is rendered,~~ a superior or district court judge, magistrate, or the clerk of the superior
 15 court may authorize a person to appeal to district court as an indigent if the person is unable to
 16 pay the costs of appeal. The clerk of superior court shall authorize a person to appeal as an
 17 indigent if the person files the required affidavit and meets one or more of the criteria listed in
 18 G.S. 1-110. A superior or district court judge, a magistrate, or the clerk of the superior court may
 19 authorize a person who does not meet any of the criteria listed in G.S. 1-110 to appeal as an
 20 indigent if the person cannot pay the costs of appeal.

21 The district court may dismiss an appeal and require the person filing the appeal to pay the
 22 court costs advanced if the allegations contained in the affidavit are determined to be untrue or
 23 if the court is satisfied that the action is frivolous or malicious. If the court dismisses the appeal,
 24 the court shall affirm the judgment of the magistrate.

25"

26
 27 **PART II. ESTABLISH A PROCESS TO CHALLENGE INDIGENCY CLAIMS ON**
 28 **APPEAL AND REQUIRE THE CLERK TO DISBURSE PAYMENTS WITHIN FIVE**
 29 **DAYS OF A REQUEST**

30 **SECTION 2.** G.S. 42-34 reads as rewritten:

31 "**§ 42-34. Undertaking on appeal and order staying execution.**

32 ...

33 (c1) Notwithstanding the provisions of subsection (b) of this section, an indigent defendant
 34 appellant, as set forth in G.S. 1-110, who prosecutes ~~his or her an~~ appeal as an indigent and who
 35 meets the requirement of G.S. 1-288 shall pay the amount of the contract rent as it becomes
 36 periodically due as set forth in subsection (b) of this section, but shall not be required to pay rent
 37 in arrears as set forth in subsection (b) of this section in order to stay execution pending appeal.
 38 Upon its rendering, a determination under this subsection that payment of rent in arrears shall
 39 not be required in order to stay execution pending appeal shall itself be stayed for a period of at
 40 least 10 days and notice of this determination shall be provided by the clerk of superior court to
 41 all parties. During the period this determination is stayed, and upon the plaintiff appellee's motion
 42 and notice to all parties, the plaintiff appellee may request a hearing before the clerk of superior
 43 court or the district court regarding this determination. Upon the filing of the plaintiff appellee's
 44 motion, the clerk of superior court shall set a hearing date within 10 calendar days and shall
 45 provide notice to all parties.

46 No writ of possession or other execution of the magistrate's judgment shall take place (i)
 47 during the stay of a determination under this subsection regarding the payment of rent in arrears
 48 or (ii) while a plaintiff appellee's motion under this subsection is pending.

49 ...

50 (e) Upon application of the plaintiff, the clerk of superior court ~~shall~~ shall, within five
 51 business days of a written request, pay to the plaintiff any amount of the rental payments paid by

1 the defendant into the clerk's office which are not claimed by the defendant in any pleadings.
2 Failure by the clerk of superior court to comply with this subsection shall result in a charge to
3 the clerk's office of one hundred dollars (\$100.00) per day for each day past the five business-day
4 period, not to exceed five hundred dollars (\$500.00), payable to the plaintiff.

5 ...

6 (g) When it appears by stipulation executed by all of the parties or by final order of the
7 court that the appeal has been resolved, the clerk of court ~~shall~~ shall, within five business days
8 of a written request, disburse any accrued moneys of the undertaking remaining in the clerk's
9 office according to the terms of the stipulation or order. Failure by the clerk of superior court to
10 comply with this subsection shall result in a charge to the clerk's office of one hundred dollars
11 (\$100.00) per day for each day past the five business-day period, not to exceed five hundred
12 dollars (\$500.00), payable to the plaintiff."

13 14 **PART III. INCREASE PUNISHMENT FOR WILLFUL AND WANTON DAMAGE TO** 15 **THE RESIDENTIAL REAL PROPERTY OF ANOTHER**

16 **SECTION 3.** G.S. 14-127 reads as rewritten:

17 **"§ 14-127. Willful and wanton injury to real property.**

18 If any person shall willfully and wantonly damage, injure or destroy any real property
19 whatsoever, either of a public or private nature, ~~he shall be the person is~~ guilty of a Class 1
20 misdemeanor. Unless the conduct is covered under some other provision of law providing greater
21 punishment, if any person shall willfully and wantonly damage, injure, or destroy the residential
22 real property of another, and that damage, injury, or destruction results in damages valued at five
23 hundred dollars (\$500.00) or more, the person is guilty of a Class I felony."

24 25 **PART IV. PROHIBIT FRAUDULENT RENTAL, LEASE, OR ADVERTISEMENT FOR** 26 **SALE OF RESIDENTIAL REAL PROPERTY**

27 **SECTION 4.** Article 20 of Chapter 14 of the General Statutes is amended by adding
28 a new section to read:

29 **"§ 14-117.8. Fraudulently renting, leasing, or advertising for sale of residential real**
30 **property.**

31 (a) Offense Involving Fraudulent Rental or Lease. – It is unlawful to rent or lease
32 residential real property to another person knowing that the rentor or lessor has no lawful
33 ownership in the property or leasehold interest in the property.

34 (b) Offense Involving Fraudulent Advertising. – It is unlawful to list or advertise
35 residential real property for sale knowing that the purported seller has no legal title or authority
36 to sell the property.

37 (c) Punishment. – Unless the conduct is covered under some other provision of law
38 providing greater punishment, a person who violates this section shall be punished as follows:

39 (1) A person who violates subsection (a) of this section is guilty of a Class H
40 felony.

41 (2) A person who violates subsection (b) of this section is guilty of a Class I
42 felony."

43 44 **PART V. APPROPRIATION TO THE ADMINISTRATIVE OFFICE OF THE COURTS**

45 **SECTION 5.** There is appropriated from the General Fund to the Administrative
46 Office of the Courts the sum of ten thousand dollars (\$10,000) in nonrecurring funds for the
47 2024-2025 fiscal year for the purpose of policy implementation, education, and training on the
48 procedures required in this act.

49 50 **PART VI. EFFECTIVE DATE**

1 **SECTION 6.** Parts 1 and 2 of this act are effective October 1, 2024, and apply to
2 judgments rendered on or after that date. Parts 3 and 4 of this act are effective December 1, 2024,
3 and apply to offenses committed on or after that date. Part 5 of this act becomes effective July 1,
4 2024. The remainder of this act is effective when it becomes law.