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HOUSE BILL 899

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Short Title: Landlord/Tenant Changes.

(Public)

Sponsors:

Referred to:

April 12, 1995

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"(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. During the 10-day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter. Upon the tenant's request prior to the expiration of the 10-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. If the landlord elects to sell the property at public or private sale, the landlord shall 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 ~~10~~  
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,~~toexecuted. 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

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

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

41 (1) By delivering a copy of the notice to the tenant or his authorized agent  
42 at least two days before the time stated in the notice for serving the writ;

- 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 distraint not permitted.**

16 It is the public policy of the State of North Carolina that distress and distraint 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.