

NORTH CAROLINA GENERAL ASSEMBLY
1979 SESSION

CHAPTER 820
HOUSE BILL 1324

AN ACT TO AMEND THE SUMMARY EJECTMENT STATUTES TO REQUIRE A REASONABLE BOND FOR APPEAL AND TO DELETE THE DOUBLE DAMAGES PENALTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 42-34(b) is rewritten to read as follows:

"(b) It shall be sufficient to stay execution of a judgment for ejectment that the defendant appellant sign an undertaking that he will pay into the office of the clerk of superior court the amount of the contract rent as it becomes due periodically after the judgment was entered and, where applicable, comply with subdivision (c) below. Any magistrate, clerk, or district court judge shall order stay of execution upon such undertaking. If either party disputes the amount of the payment or the due date in such undertaking, the aggrieved party may move for modification of the terms of the undertaking before the clerk of superior court or the district court. Upon such motion and upon notice to all interested parties, the clerk or court shall hold a hearing and determine what modifications, if any, are appropriate."

Sec. 2. A new subdivision G.S. 42-34(c) is added after G.S. 42-34(b) as follows:

"(c) In an ejectment action based upon alleged nonpayment of rent where the judgment is entered more than five working days before the day when the next rent will be due under the lease, the appellant shall make an additional undertaking to stay execution pending appeal. Such additional undertaking shall be the payment of the prorated rent for the days between the day that the judgment was entered and the next day when the rent will be due under the lease. Notwithstanding, such additional undertaking shall not be required of an indigent appellant who prosecutes his appeal with an in forma pauperis affidavit that meets the requirements of G.S. 1-288."

Sec. 3. A new subdivision G.S. 42-34(d) is added after G.S. 42-34(c), as follows:

"(d) The undertaking by the appellant and the order staying execution may be substantially in the following form:

'State of North Carolina,

'County of _____

'_____, Plaintiff

vs.

'_____, Defendant

Bond to
Stay Execution
On Appeal to
District Court

'Now comes the defendant in the above entitled action and respectfully shows the court that judgment for summary ejectment was entered against the defendant and for the plaintiff on the _____ day of _____, 19____, by the Magistrate.

Defendant has appealed the judgment to the District Court.

'Pursuant to the terms of the lease between plaintiff and defendant, defendant is obligated to pay rent in the amount of \$____ per____, due on the _____ day of each _____.

'Where an additional undertaking is required by G.S. 42-34(c), the defendant hereby tenders \$_____ to the Court as required.

"Defendant hereby undertakes to pay the periodic rent hereinafter due according to the aforesaid terms of the lease and moves the Court to stay execution on the judgment for summary ejectment until this matter is heard on appeal by the District Court.

"This the ____ day of ____, 19__.

Defendant

"Upon execution of the above bond, execution on said judgment for summary ejectment is hereby stayed until the action is heard on appeal in the District Court. If defendant fails to make any rental payment to the clerk's office within five days of the due date, upon application of the plaintiff, the stay of execution shall dissolve and the sheriff may dispossess the defendant.

"This ____ day of ____, 19__.

Assistant Clerk of Superior Court".

Sec. 4. A new subdivision G.S. 42-34(e) is added after G.S. 42-34(d), as follows:

"(e) Upon application of the plaintiff, the clerk of superior court shall pay to the plaintiff any amount of the rental payments paid by the defendant into the clerk's office which are not claimed by the defendant in any pleadings."

Sec. 5. A new subdivision G.S. 42-34(f) is added after G.S. 42-34(e), as follows:

"(f) If the defendant fails to make a payment within five days of the due date according to the undertaking and order staying execution, the clerk, upon application of the plaintiff, shall issue execution on the judgment for possession."

Sec. 6. A new subdivision G.S. 42-34(g) is added after G.S. 42-34(f), as follows:

"(g) When it appears by stipulation executed by all of the parties or by final order of the court that the appeal has been resolved, the clerk of court shall disburse any accrued monies of the undertaking remaining in the clerk's office according to the terms of the stipulation or order."

Sec. 7. G.S. 42-32 is amended to delete, in line 6, the word "double".

Sec. 8. G.S. 42-44 is amended by deleting subdivision (b) in its entirety, by deleting from subdivision (c) the entire second sentence, and by renumbering subdivisions "(c)" and "(d)" to be subdivisions "(b)" and "(c)" respectively.

Sec. 9. G.S. 7A-227 is amended by adding the following sentence:

"This section shall not require any undertaking of appellants in summary ejectment actions other than those imposed by Chapter 42 of the General Statutes."

Sec. 10. G.S. 1A-1, Rule 62(a), is amended by deleting from the first sentence the words "in summary ejectment cases and".

Sec. 11. This act shall become effective September 1, 1979.

In the General Assembly read three times and ratified, this the 7th day of June, 1979.