

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SESSION LAW 2015-55
HOUSE BILL 315

AN ACT TO MAKE TECHNICAL CORRECTIONS TO LANDLORD/TENANT LAW AND
TO PROVIDE FOR PROPER COLLECTION OF FEES AND COSTS FOR SHERIFFS
EXECUTING WRITS OF POSSESSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-36.2(a) reads as rewritten:

"(a) When Sheriff May Remove Property. – Before removing a tenant's personal property from demised premises pursuant to a writ for possession of real property or an order, the sheriff shall give the tenant notice of the approximate time the writ will be executed. The time within which the sheriff shall have to execute the writ shall be no more than five days from the sheriff's receipt thereof. The sheriff shall remove the tenant's property, as provided in the writ, no earlier than the time specified in the notice, unless:

- (1) The landlord, or his authorized agent, signs a statement saying that the tenant's property can remain on the premises, in which case the sheriff shall simply lock the premises; or
- (2) The landlord, or his authorized agent, signs a statement saying that the landlord does not want to eject the tenant because the tenant has paid all court costs charged to him and has satisfied his indebtedness to the landlord.

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

SECTION 2. G.S. 7A-311(b) reads as rewritten:

"§ 7A-311. Uniform civil process fees.

...
(b) All fees that are required to be assessed, collected, and remitted under subsection (a) of this section shall be collected in advance (except in suits in forma pauperis) except those contingent on ~~expenses or sales prices.~~ prices or statutory commissions. When the fee is not collected in advance or at the time of assessment, a lien shall exist in favor of the county on all property of the party owing the fee. If the fee remains unpaid it shall be entered as a judgment against the debtor and shall be docketed in the judgment docket in the office of the clerk of superior court."

SECTION 3.(a) G.S. 1-474 reads as rewritten:

"§ 1-474. Order of seizure and delivery to plaintiff.

(a) Order. – The clerk of court may, upon notice and hearing as provided in G.S. 1-474.1 and upon the giving by the plaintiff of the undertaking prescribed in G.S. 1-475, require the sheriff of the county where the property claimed is located to take the property from the defendant and deliver it to the plaintiff. The act of the clerk in issuing or refusing to issue the order to the sheriff is a judicial act and may be appealed pursuant to G.S. 1-301.1 to the judge of the district or superior court having jurisdiction of the principal action.

(b) Expiration of Certain Orders. – When delivery of property is claimed from a debtor who allegedly defaulted on his payments for personal property purchased under a conditional sale contract, a purchase money security agreement or on a loan secured by personal property,



an order of seizure and delivery to the plaintiff for that property expires 60 days after it is issued.

(c) Fee Deposit. – Upon issuance of the order described in subsection (a) of this section, a fee deposit shall be collected by the sheriff from the plaintiff to offset the reasonable and necessary fees and expenses for taking and storing the property seized pursuant to this Article."

SECTION 3.(b) G.S. 1-476 reads as rewritten:

"§ 1-476. Sheriff's duties.

Upon the receipt of the order from the clerk with the plaintiff's ~~undertaking~~, undertaking and the fee deposit described in G.S. 1-474(c), the sheriff shall forthwith take the property described in the affidavit, if it is in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion."

SECTION 3.(c) G.S. 1-481 reads as rewritten:

"§ 1-481. Care and delivery of seized property.

When the sheriff has taken property, as provided in this Article, he must keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking and his necessary expenses for keeping ~~it~~ the property, minus any amount received pursuant to G.S. 1-474(c). If the amount due under this section is less than the amount received pursuant to G.S. 1-474(c), then the sheriff shall return the excess amount to the depositor. In the event that a third party intervener is entitled to possession of the property, any amount received pursuant to G.S. 1-474(c) shall be returned to the depositor."

SECTION 4. This act becomes effective October 1, 2015.

In the General Assembly read three times and ratified this the 27th day of May, 2015.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 8:30 a.m. this 4th day of June, 2015