

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1549

Short Title: Clarify Laws Governing Execution on Judgments. (Public)

Sponsors: Representatives McGee and Stam (Primary Sponsors).

Referred to: Judiciary II.

April 18, 2007

1 **A BILL TO BE ENTITLED**

2 AN ACT TO CLARIFY THAT ENCUMBERED PROPERTY IS SUBJECT TO
3 EXECUTION UNDER ARTICLE 28 OF CHAPTER 1 OF THE GENERAL
4 STATUTES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 1-313(1) reads as rewritten:

7 **"§ 1-313. Form of execution.**

8 The execution must be directed to the sheriff, or to the coroner when the sheriff is a
9 party to or interested in the action. In those counties where the office of coroner is
10 abolished, or is vacant, and in which process is required to be executed on the sheriff,
11 the authority to execute such process shall be vested in the clerk of court; however, the
12 clerk of court is hereby empowered to designate and direct by appropriate order some
13 person to act in his stead to execute the same. The execution must also be subscribed by
14 the clerk of the court, and must refer to the judgment, stating the county where the
15 judgment roll or transcript is filed, the names of the parties, the amount of the judgment,
16 if it is for money, the amount actually due thereon, and the time of docketing in the
17 county to which the execution is issued, and shall require the officer substantially as
18 follows:

19 (1) Against Property—property.

20 a. No Lien on Personal Property until Levy. – If it is against the
21 property of the judgment debtor, it shall require the officer to
22 satisfy the judgment out of his personal property; and if
23 sufficient personal property cannot be found, out of the real
24 property belonging to him on the day when the judgment was
25 docketed in the county, or at any time thereafter; but no
26 execution against the property of a judgment debtor is a lien on
27 his personal property, as against any bona fide purchaser from
28 him for value, or as against any other execution, except from
29 the levy thereof.

1 b. Real or personal property required to satisfy the judgment is
2 subject to execution regardless of whether the property is
3 encumbered. However, any personal or real property sold under
4 execution remains subject to all prior encumbrances, including
5 liens, mortgages, deeds of trust, perfected security interests, and
6 prior judgments which became effective prior to the lien of the
7 judgment pursuant to which the execution sale is held, in the
8 same manner and to the same extent as if no such sale had been
9 held."

10 **SECTION 2.** This act becomes effective October 1, 2007.