

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 802

Short Title: Landlord/Tenant/Shorten Eviction Time. (Public)

Sponsors: Representatives Earle, T. Moore, W. Brawley, and Cunningham (Primary Sponsors).

*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Judiciary Subcommittee C.

April 11, 2013

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS RELATED TO LANDLORD AND TENANT RELATIONSHIPS TO SHORTEN THE TIME PERIOD REQUIRED TO EVICT A TENANT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 7A-222 reads as rewritten:

**"§ 7A-222. General trial practice and procedure.**

Trial of a small claim action before a magistrate is without a jury. The rules of evidence applicable in the trial of civil actions generally are observed. At the conclusion of plaintiff's evidence the magistrate may render judgment of dismissal if plaintiff has failed to establish a prima facie case. If a judgment of dismissal is not rendered the defendant may introduce evidence. At the conclusion of all the evidence the magistrate may render judgment or may in his discretion reserve judgment for a period not in excess of 10 days. However, in a summary ejectment action, the magistrate shall render judgment on the same day on which the conclusion of all the evidence occurs."

**SECTION 2.** G.S. 7A-223 reads as rewritten:

**"§ 7A-223. Practice and procedure in small claim actions for summary ejectment.**

(a) In any small claim action demanding summary ejectment or past due rent, or both, the complaint may be signed by an agent acting for the plaintiff who has actual knowledge of the facts alleged in the complaint. If a small claim action demanding summary ejectment is assigned to a magistrate, the practice and procedure prescribed for commencement, form and service of process, assignment, pleadings, and trial in small claim actions generally are observed, except that if the defendant by written answer denies the title of the plaintiff, the action is placed on the civil issue docket of the district court division for trial before a district judge. In such event, the clerk withdraws assignment of the action from the magistrate and immediately gives written notice of withdrawal, by any convenient means, to the plaintiff and the magistrate to whom the action has been assigned. The plaintiff, within five days after receipt of the notice, and the defendant, in his answer, may request trial by jury. Failure to request jury trial within the time limited is a waiver of the right to trial by jury.

(b) When a small claim action demanding summary ejectment is assigned to a magistrate, the magistrate shall conduct a trial on the date listed on the summons issued by the clerk of superior court. The provisions of G.S. 42-30 shall apply to any trial under this subsection. A magistrate shall not continue any summary ejectment action unless (i) the magistrate has obtained the consent of the plaintiff or (ii) service of process has not been



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1 obtained as provided in G.S. 42-29, in which case a magistrate shall not continue any summary  
2 ejectment action for longer than five days, excluding weekends and legal holidays, without the  
3 express consent of the plaintiff. If any magistrate continues any summary ejectment action for  
4 any reason or any period of time other than those reasons and time periods specifically  
5 provided in this subsection, then for each affected case, the magistrate in his or her official  
6 capacity shall pay, to the plaintiff who will sue for the same, the sum of fifty dollars (\$50.00)  
7 per day multiplied by the number of days, excluding weekends and legal holidays, that the  
8 magistrate continued the summary ejectment action beyond the time periods specified in this  
9 section."

10 **SECTION 3.** G.S. 7A-228 reads as rewritten:

11 **"§ 7A-228. New trial before magistrate; appeal for trial de novo; how appeal perfected;**  
12 **oral notice; dismissal.**

13 (a) The chief district court judge may authorize magistrates to hear motions to set aside  
14 an order or judgment pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a  
15 magistrate. The exercise of the authority of the chief district court judge in allowing magistrates  
16 to hear Rule 60(b)(1) motions shall not be construed to limit the authority of the district court to  
17 hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief  
18 from a judgment or order entered by a magistrate and, if granted, to order a new trial before a  
19 magistrate. After final disposition before the magistrate, the sole remedy for an aggrieved party  
20 is appeal for trial de novo before a district court judge or a jury. Notice of appeal may be given  
21 orally in open court upon announcement or after entry of judgment. If not announced in open  
22 court, written notice of appeal must be filed in the office of the clerk of superior court within 10  
23 days after entry of ~~judgment~~judgment, except that in a summary ejectment action under Article  
24 3 of Chapter 42 of the General Statutes written notice of appeal must be filed in the office of  
25 the clerk of superior court within five days after entry of judgment. The appeal must be  
26 perfected in the manner set out in subsection (b). Upon announcement of the appeal in open  
27 court or upon receipt of the written notice of appeal, the appeal shall be noted upon the  
28 judgment. If the judgment was mailed to the parties, then the time computations for appeal of  
29 such judgment shall be pursuant to G.S. 1A-1, Rule 6.

30 (b) The appeal shall be perfected by (1) oral announcement of appeal in open court; or  
31 (2) by filing notice of appeal in the office of the clerk of superior court within five days after  
32 entry of judgment in a summary ejectment action and within 10 days after entry of  
33 judgment~~judgment~~ in all other actions, pursuant to subsection (a), and by serving a copy of the  
34 notice of appeal on all parties pursuant to G.S. 1A-1, Rule 5. Failure to pay the costs of court to  
35 appeal within 10 days after entry of judgment in a summary ejectment action and within 20  
36 days after entry of judgment in all other actions shall result in the automatic dismissal of the  
37 appeal. The failure to demand a trial by jury in district court by the appealing party before the  
38 time to perfect the appeal has expired is a waiver of the right thereto.

39 (b1) A person desiring to appeal as an indigent shall, within five days of entry of  
40 judgment by the magistrate in a summary ejectment action and within 10 days of entry of  
41 judgment by the ~~magistrate~~ magistrate in all other actions, file an affidavit that he or she is  
42 unable by reason of poverty to pay the costs of appeal. Within 10 days after entry of judgment  
43 in a summary ejectment action and within 20 days after entry of ~~judgment~~ judgment in all other  
44 actions a superior or district court judge, magistrate, or the clerk of the superior court may  
45 authorize a person to appeal to district court as an indigent if the person is unable to pay the  
46 costs of appeal. The clerk of superior court shall authorize a person to appeal as an indigent if  
47 the person files the required affidavit and meets one or more of the criteria listed in G.S. 1-110.  
48 A superior or district court judge, a magistrate, or the clerk of the superior court may authorize  
49 a person who does not meet any of the criteria listed in G.S. 1-110 to appeal as an indigent if  
50 the person cannot pay the costs of appeal.

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

5 (c) Whenever such appeal is docketed and is regularly set for trial, and the appellant  
6 fails to appear and prosecute his appeal, the presiding judge may have the appellant called and  
7 the appeal dismissed; and in such case the judgment of the magistrate shall be affirmed."

8 **SECTION 4.** G.S. 42-25.9 reads as rewritten:

9 **"§ 42-25.9. Remedies.**

10 ...

11 (g) ~~Ten~~Five days after being placed in lawful possession by execution of a writ of  
12 possession, a landlord may throw away, dispose of, or sell all items of personal property  
13 remaining on the premises, except that in the case of the lease of a space for a manufactured  
14 home as defined in G.S. 143-143.9(6), G.S. 44A-2(e2) shall apply to the disposition of a  
15 manufactured home with a current value in excess of five hundred dollars (\$500.00) and its  
16 contents by a landlord after being placed in lawful possession by execution of a writ of  
17 possession. During the ~~10-day~~five-day period after being placed in lawful possession by  
18 execution of a writ of possession, a landlord may move for storage purposes, but shall not  
19 throw away, dispose of, or sell any items of personal property remaining on the premises unless  
20 otherwise provided for in this Chapter. Upon the tenant's request prior to the expiration of the  
21 ~~10-day~~five-day period, the landlord shall release possession of the property to the tenant during  
22 regular business hours or at a time agreed upon. If the landlord elects to sell the property at  
23 public or private sale, the landlord shall give written notice to the tenant by first-class mail to  
24 the tenant's last known address at least ~~seven~~three days prior to the day of the sale. The  
25 ~~seven-day~~three-day notice of sale may run concurrently with the ~~10-day~~five-day period which  
26 allows the tenant to request possession of the property. The written notice shall state the date,  
27 time, and place of the sale, and that any surplus of proceeds from the sale, after payment of  
28 unpaid rents, damages, storage fees, and sale costs, shall be disbursed to the tenant, upon  
29 request, within ~~10~~five days after the sale, and will thereafter be delivered to the government of  
30 the county in which the rental property is located. Upon the tenant's request prior to the day of  
31 sale, the landlord shall release possession of the property to the tenant during regular business  
32 hours or at a time agreed upon. The landlord may apply the proceeds of the sale to the unpaid  
33 rents, damages, storage fees, and sale costs. Any surplus from the sale shall be disbursed to the  
34 tenant, upon request, within ~~10~~five days of the sale and shall thereafter be delivered to the  
35 government of the county in which the rental property is located.

36 (h) If the total value of all property remaining on the premises at the time of execution  
37 of a writ of possession in an action for summary ejectment is less than five hundred dollars  
38 (\$500.00), the property shall be deemed abandoned ~~five~~two days after the time of execution,  
39 and the landlord may throw away or dispose of the property. Upon the tenant's request prior to  
40 the expiration of the ~~five-day~~two-day period, the landlord shall release possession of the  
41 property to the tenant during regular business hours or at a time agreed upon."

42 **SECTION 5.** G.S. 42-28 reads as rewritten:

43 **"§ 42-28. Summons issued by clerk.**

44 When the lessor or his assignee files a complaint pursuant to G.S. 42-26 or 42-27, and asks  
45 to be put in possession of the leased premises, the clerk of superior court ~~shall~~shall, within one  
46 day of the filing of the complaint, excluding weekends and legal holidays, issue a summons  
47 requiring the defendant to appear at a certain time and place not to exceed seven days from the  
48 issuance of the summons, excluding weekends and legal holidays, to answer the  
49 ~~complaint~~complaint and to appear for trial in small claims court. If the clerk of superior court  
50 refuses or otherwise fails to issue the summons or refuses or fails to set a court date on the  
51 summons that is seven days or less from the issuance of the summons, excluding weekends and

1 legal holidays, then for each affected case, the clerk of superior court in his or her official  
2 capacity shall pay, to the lessor who will sue for the same, the sum of fifty dollars (\$50.00) per  
3 day, excluding weekends and legal holidays, multiplied by the number of days that the date of  
4 the issuance of the summons or the date of trial listed on the summons exceeds the  
5 requirements of this section. The plaintiff may claim rent in arrears, and damages for the  
6 occupation of the premises since the cessation of the estate of the lessee, not to exceed the  
7 jurisdictional amount established by G.S. 7A-210(1), but if he omits to make such claim, he  
8 shall not be prejudiced thereby in any other action for their recovery."

9 **SECTION 6.** G.S. 42-36.2 reads as rewritten:

10 **"§ 42-36.2. Notice to tenant of execution of writ for possession of property; storage of**  
11 **evicted tenant's personal property.**

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

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

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

30 (b) Sheriff May Store Property. – When the sheriff removes the personal property of an  
31 evicted tenant from demised premises pursuant to a writ or order the tenant shall take  
32 possession of his property. If the tenant fails or refuses to take possession of his property, the  
33 sheriff may deliver the property to any storage warehouse in the county, or in an adjoining  
34 county if no storage warehouse is located in that county, for storage. The sheriff may require  
35 the landlord to advance the cost of delivering the property to a storage warehouse plus the cost  
36 of one month's storage before delivering the property to a storage warehouse. If a landlord  
37 refuses to advance these costs when requested to do so by the sheriff, the sheriff shall not  
38 remove the tenant's property, but shall return the writ unexecuted to the issuing clerk of court  
39 with a notation thereon of his reason for not executing the writ. Except for the disposition of  
40 manufactured homes and their contents as provided in G.S. 42-25.9(g) and G.S. 44A-2(e2),  
41 within ~~10~~five days of the landlord's being placed in lawful possession by execution of a writ of  
42 possession and upon the tenant's request within that ~~10-day~~five-day period, the landlord shall  
43 release possession of the property to the tenant during regular business hours or at a time  
44 agreed upon. During the ~~10-day~~five-day period after being placed in lawful possession by  
45 execution of a writ of possession, a landlord may move for storage purposes, but shall not  
46 throw away, dispose of, or sell any items of personal property remaining on the premises unless  
47 otherwise provided for in this Chapter. After the expiration of the ~~10-day~~five-day period, the  
48 landlord may throw away, dispose of, or sell the property in accordance with the provisions of  
49 G.S. 42-25.9(g). If the tenant does not request release of the property within ~~10~~five days, all  
50 costs of summary ejectment, execution and storage proceedings shall be charged to the tenant

1 as court costs and shall constitute a lien against the stored property or a claim against any  
2 remaining balance of the proceeds of a warehouseman's lien sale.

3 (c) Liability of the Sheriff. – A sheriff who stores a tenant's property pursuant to this  
4 section and any person acting under the sheriff's direction, control, or employment shall be  
5 liable for any claims arising out of the willful or wanton negligence in storing the tenant's  
6 property.

7 (d) Notice. – The notice required by subsection (a) shall, except in actions involving the  
8 lease of a space for a manufactured home as defined in G.S. 143-143.9(6), inform the tenant  
9 that failure to request possession of any property on the premises within ~~40~~five days of  
10 execution may result in the property being thrown away, disposed of, or sold. Notice shall be  
11 made by one of the following methods:

- 12 (1) By delivering a copy of the notice to the tenant or his authorized agent at  
13 least two days before the time stated in the notice for serving the writ;
- 14 (2) By leaving a copy of the notice at the tenant's dwelling or usual place of  
15 abode with a person of suitable age and discretion who resides there at least  
16 two days before the time stated in the notice for serving the writ; or
- 17 (3) By mailing a copy of the notice by first-class mail to the tenant at his last  
18 known address at least five days before the time stated in the notice for  
19 serving the writ."

20 **SECTION 7.** This act becomes effective July 1, 2013, and applies to all actions for  
21 summary ejection filed on and after that date.