

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 315
Committee Substitute Favorable 4/22/15

Short Title: Sheriff & Landlord/Tenant-Writs of Poss. Chg.

(Public)

Sponsors:

Referred to:

March 23, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL CORRECTIONS TO LANDLORD/TENANT LAW AND
3 TO PROVIDE FOR PROPER COLLECTION OF FEES AND COSTS FOR SHERIFFS
4 EXECUTING WRITS OF POSSESSION.

5 The General Assembly of North Carolina enacts:

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

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

13 (1) The landlord, or his authorized agent, signs a statement saying that the
14 tenant's property can remain on the premises, in which case the sheriff shall
15 simply lock the premises; or

16 (2) The landlord, or his authorized agent, signs a statement saying that the
17 landlord does not want to eject the tenant because the tenant has paid all
18 court costs charged to him and has satisfied his indebtedness to the landlord.

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

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

27 "**§ 7A-311. Uniform civil process fees.**

28 ...

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

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



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

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

8 (b) Expiration of Certain Orders. – When delivery of property is claimed from a debtor
9 who allegedly defaulted on his payments for personal property purchased under a conditional
10 sale contract, a purchase money security agreement or on a loan secured by personal property,
11 an order of seizure and delivery to the plaintiff for that property expires 60 days after it is
12 issued.

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

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

17 **"§ 1-476. Sheriff's duties.**

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

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

26 **"§ 1-481. Care and delivery of seized property.**

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

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