

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 880
Committee Substitute Favorable 5/3/19
Senate Judiciary Committee Substitute Adopted 7/8/19

Short Title: Landlord/Tenant Changes.

(Public)

Sponsors:

Referred to:

April 22, 2019

A BILL TO BE ENTITLED

AN ACT TO ALLOW AUTHORIZED INDIVIDUALS TO DIRECT THE REMOVAL OR DISPOSAL OF CERTAIN PERSONAL PROPERTY OF A DECEDENT LOCATED IN LEASED PREMISES AND TO AUTHORIZE COLLECTION OF CERTAIN EXPENSES RELATED TO A SUMMARY EJECTMENT PROCEEDING AND EXECUTION OF A WRIT OF POSSESSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-25.7 reads as rewritten:

"§ 42-25.7. Distress and distraint not permitted.

It is the public policy of the State of North Carolina that distress and distraint are prohibited and that landlords of residential rental property shall have rights concerning the personal property of their residential tenants only in accordance with G.S. 42-25.9(d), 42-25.9(g), 42-25.9(h), 42-36.2, 28A-25-2, or 28A-25-7."

SECTION 2.(a) G.S. 28A-25-1 reads as rewritten:

"§ 28A-25-1. Collection of property by affidavit when decedent dies intestate.

(a) When a decedent dies intestate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars (\$20,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, or an heir or creditor of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir or creditor or the public administrator stating:

- (1) The name and address of the affiant and the fact that the affiant is the public administrator or an heir or creditor of the decedent;
- (2) The name of the decedent and the decedent's residence at time of death;
- (3) The date and place of death of the decedent;
- (4) That 30 days have elapsed since the death of the decedent;
- (5) That the value of all the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed twenty thousand dollars (\$20,000);
- (6) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;



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- 1 (7) The names and addresses of those persons who are entitled, under the
2 provisions of the Intestate Succession Act, to the personal property of the
3 decedent and their relationship, if any, to the decedent; and
4 (8) A description sufficient to identify each tract of real property owned by the
5 decedent at the time of the decedent's death.

6 In those cases in which the affiant is the surviving spouse and sole heir of the decedent, not
7 disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected
8 pursuant to this section may exceed twenty thousand dollars (\$20,000) in value but shall not
9 exceed thirty thousand dollars (\$30,000) in value, after reduction for any spousal allowance paid
10 to the surviving spouse pursuant to G.S. 30-15. In such cases, the affidavit shall state: (i) the
11 name and address of the affiant and the fact that the affiant is the surviving spouse and is entitled,
12 under the provisions of the Intestate Succession Act, to all of the property of the decedent; (ii)
13 that the value of all of the personal property owned by the estate of the decedent, less liens and
14 encumbrances thereon, does not exceed thirty thousand dollars (\$30,000); and (iii) the
15 information required under subdivisions (2), (3), (4), (6), and (8) of this subsection.

16 ...

17 (d) The public administrator or an heir that has presented an affidavit as provided in
18 subsection (a) of this section shall be entitled to remove or otherwise dispose of the decedent's
19 personal property located in demised premises."

20 **SECTION 2.(b)** G.S. 28A-25-1.1 reads as rewritten:

21 "**§ 28A-25-1.1. Collection of property by affidavit when decedent dies testate.**

22 (a) When a decedent dies testate leaving personal property, less liens and encumbrances
23 thereon, not exceeding twenty thousand dollars (\$20,000) in value, at any time after 30 days from
24 the date of death, any person indebted to the decedent or having possession of tangible personal
25 property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the
26 decedent shall make payment of the indebtedness or deliver the tangible personal property or an
27 instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the
28 public administrator appointed pursuant to G.S. 28A-12-1, a person named or designated as
29 executor in the will, devisee, heir or creditor, of the decedent, not disqualified under
30 G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with
31 subsection (b) and made by or on behalf of the heir, the person named or designated as executor
32 in the will of the decedent, the creditor, the public administrator, or the devisee, stating:

- 33 (1) The name and address of the affiant and the fact that the affiant is the public
34 administrator, a person named or designated as executor in the will, devisee,
35 heir or creditor, of the decedent;
36 (2) The name of the decedent and the decedent's residence at time of death;
37 (3) The date and place of death of the decedent;
38 (4) That 30 days have elapsed since the death of the decedent;
39 (5) That the decedent died testate leaving personal property, less liens and
40 encumbrances thereon, not exceeding twenty thousand dollars (\$20,000) in
41 value;
42 (6) That the decedent's will has been admitted to probate in the court of the proper
43 county and a duly certified copy of the will has been recorded in each county
44 in which is located any real property owned by the decedent at the time of the
45 decedent's death;
46 (7) That a certified copy of the decedent's will is attached to the affidavit;
47 (8) That no application or petition for appointment of a personal representative is
48 pending or has been granted in any jurisdiction;
49 (9) The names and addresses of those persons who are entitled, under the
50 provisions of the will, or if applicable, of the Intestate Succession Act, to the
51 property of the decedent; and their relationship, if any, to the decedent; and

1 (10) A description sufficient to identify each tract of real property owned by the
2 decedent at the time of the decedent's death.

3 In those cases in which the affiant is the surviving spouse, is entitled to all of the property of
4 the decedent, and is not disqualified under G.S. 28A-4-2, the property described in this
5 subsection that may be collected pursuant to this section may exceed twenty thousand dollars
6 (\$20,000) in value but shall not exceed thirty thousand dollars (\$30,000) in value, after reduction
7 for any spousal allowance paid to the surviving spouse pursuant to G.S. 30-15. In such cases, the
8 affidavit shall state: (i) the name and address of the affiant and the fact that the affiant is the
9 surviving spouse and is entitled, under the provisions of the decedent's will, or if applicable, of
10 the Intestate Succession Act, to all of the property of the decedent; (ii) that the decedent died
11 testate leaving personal property, less liens and encumbrances thereon, not exceeding thirty
12 thousand dollars (\$30,000); and (iii) the information required under subdivisions (2), (3), (4), (6),
13 (7), (8), and (10) of this subsection.

14 ...

15 (d) The public administrator, a person named or designated as executor in the will, a
16 devisee, or an heir that has presented an affidavit as provided in subsection (a) of this section
17 shall be entitled to remove or otherwise dispose of the decedent's personal property located in
18 the demised premises."

19 **SECTION 2.(c)** G.S. 28A-25-2 reads as rewritten:

20 **"§ 28A-25-2. Effect of affidavit.**

21 The person paying, delivering, transferring or issuing personal property or the evidence
22 thereof pursuant to an affidavit meeting the requirements of G.S. 28A-25-1(a) or
23 G.S. 28A-25-1.1(a) is discharged and released to the same extent as if the person dealt with a
24 duly qualified personal representative of the decedent. A lessor or lessor's agent of the demised
25 premises that, at the direction of an affiant authorized pursuant to G.S. 28A-25-1(d) or
26 G.S. 28A-25-1.1(d), removes, throws away, or otherwise disposes of the personal property
27 located in demised premises is discharged and released to the same extent as if the lessor dealt
28 with a duly qualified personal representative of the decedent. The person or lessor is not required
29 to see to the application of the personal property or evidence thereof or to inquire into the truth
30 of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay,
31 deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its
32 payment, delivery, transfer, or issuance compelled upon proof of their right in an action brought
33 for that purpose by or on behalf of the persons entitled thereto. The court costs and attorney's fee
34 incident to the action shall be taxed against the person whose refusal to comply with the
35 provisions of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) made the action necessary. The heir or
36 creditor to whom payment, delivery, transfer or issuance is made is answerable and accountable
37 therefor to any duly qualified personal representative or collector of the decedent's estate or to
38 any other person having an interest in the estate."

39 **SECTION 3.** G.S. 42-46 reads as rewritten:

40 **"§ 42-46. Authorized late ~~fees and fees~~, eviction fees, ~~fees~~, and other costs and expenses.**

41 ...

42 (e) Complaint-Filing Fee. – Pursuant to a written lease, a landlord may charge a
43 complaint-filing fee not to exceed fifteen dollars (\$15.00) or five percent (5%) of the monthly
44 rent, whichever is greater, only if the tenant was in default of the lease, the landlord filed ~~and~~
45 ~~served a summons and~~ a complaint for summary ejectment and/or money owed, the tenant cured
46 the default or claim, and the landlord dismissed the complaint prior to judgment. The landlord
47 can include this fee in the amount required to cure the default.

48 ...

49 (i) Out-of-Pocket Expenses. – In addition to the late fees referenced in subsections (a)
50 and (b) of this section and the administrative fees of a landlord referenced in subsections (e)

1 through (g) of this section, a landlord is also permitted to charge and recover from a tenant the
2 following actual out-of-pocket expenses:

- 3 (1) Filing fees charged by the court, including those required for filing a
4 complaint and a writ of possession.
5 (2) Costs for service of process pursuant to G.S. 1A-1, Rule 4 of the North
6 Carolina Rules of Civil Procedure and ~~G.S. 42-29~~ G.S. 42-29, and for service
7 of the writ of possession pursuant to G.S. 1-313(4) and G.S. 42-36.2.
8 (3) Reasonable attorneys' fees actually incurred, pursuant to a written lease, not
9 to exceed fifteen percent (15%) of the amount owed by the tenant, or fifteen
10 percent (15%) of the monthly rent stated in the lease if the eviction is based
11 on a default other than the nonpayment of rent.

12 ...

13 (k) Alternative Resolution. – Nothing in this section shall be deemed to prohibit the
14 landlord and tenant from reaching an agreement to resolve a dispute involving an alleged default
15 under a lease or agreement, provided that such negotiated terms may not involve payment of any
16 fees, costs, or expenses not permitted by this section."

17 **SECTION 4.** G.S. 42-51 reads as rewritten:

18 "**§ 42-51. Permitted uses of the deposit.**

19 (a) Security deposits for residential dwelling units shall be permitted only for the
20 following:

21 ...

22 (8) Any ~~fee~~ fee, cost, or expense permitted by G.S. 42-46.

23 (b) The security deposit shall not exceed an amount equal to two weeks' rent if a tenancy
24 is week to week, one and one-half months' rent if a tenancy is month to month, and two months'
25 rent for terms greater than month to month. These deposits must be fully accounted for by the
26 landlord as set forth in G.S. 42-52."

27 **SECTION 5.** This act is effective when it becomes law. Section 2 of this act applies
28 to decedents dying on or after that date.