

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

1

HOUSE BILL 899

Short Title: Landlord/Tenant Changes.

(Public)

---

Sponsors: Representatives Sherrill; Allred, Baker, Barbee, Bowie, Brawley, Cansler, Capps, Clary, Crawford, Culp, Cummings, Davis, Dickson, Dockham, Edwards, Fitch, Hiatt, Holmes, Hurley, Ives, Justus, Locke, McCrary, McMahan, K. Miller, Miner, Mitchell, Morgan, Neely, Nichols, Owens, Pate, Preston, Pulley, Rayfield, Reynolds, Robinson, Russell, Shubert, Tallent, Thompson, Watson, Weatherly, and G. Wilson.

---

Referred to: Judiciary I.

---

April 12, 1995

A BILL TO BE ENTITLED

1  
2 AN ACT TO PROVIDE FOR DISPOSAL OF ABANDONED PROPERTY BY  
3 LANDLORDS AND TO AMEND THE LAW OF SUMMARY EJECTMENT BY  
4 REDUCING THE TIME ALLOWED FOR A DEFENDANT TO APPEAR IN  
5 COURT, BY ALLOWING A LANDLORD TO HAVE UNCLAIMED PROPERTY  
6 OF AN EJECTED TENANT PLACED AT THE NEAREST PUBLIC RIGHT-OF-  
7 WAY, AND BY REVISING THE APPLICATION OF THE RETALIATORY  
8 EVICTION DEFENSE.

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 42-25.9 is amended by adding a new subsection to read:

11 "(g) Twenty-one days after being placed in lawful possession by execution of a writ  
12 of possession and posting a notice of intent to sell personal property, a landlord may elect  
13 to enter and remove, store, or sell at public or private sale, after one advertisement at least  
14 seven days prior to the date of sale, all items of personal property remaining on the  
15 premises and may apply the proceeds of the sale to the unpaid rents, damages, storage  
16 fees, sale costs, and attorneys' fees. Any surplus from the sale shall be disbursed to the

1 tenant or, if the tenant cannot be located, the landlord shall hold the surplus for a period  
2 of three months, after which time the landlord shall deliver any remaining proceeds to the  
3 government of the county in which the rental property is located."

4 Sec. 2. G.S. 42-28 reads as rewritten:

5 **"§ 42-28. Summons issued by clerk.**

6 When the lessor or his assignee files a complaint pursuant to G.S. 42-26 or 42-27, and  
7 asks to be put in possession of the leased premises, the clerk of superior court shall issue  
8 a summons requiring the defendant to appear at a certain time and place not to exceed ~~40~~  
9 seven days from the issuance of the summons to answer the complaint. The plaintiff may  
10 claim rent in arrears, and damages for the occupation of the premises since the cessation  
11 of the estate of the lessee, not to exceed the jurisdictional amount established by G.S. 7A-  
12 210(1), but if he omits to make such claim, he shall not be prejudiced thereby in any  
13 other action for their recovery."

14 Sec. 3. G.S. 42-29 reads as rewritten:

15 **"§ 42-29. Service of summons.**

16 The officer receiving the summons shall mail a copy of the summons and complaint  
17 to the defendant at his last known address in a stamped addressed envelope provided by  
18 the plaintiff to the action. The officer ~~may~~ may, within five days of the issuance of the  
19 summons, attempt to telephone the defendant requesting that the defendant either  
20 personally visit the officer to accept service, or schedule an appointment for the  
21 defendant to receive delivery of service from the officer. If the officer does not attempt  
22 to telephone the defendant or the attempt is ~~unsuccessful, unsuccessful or does not result~~  
23 in service to the defendant, the officer shall make at least one visit to the place of abode  
24 of the defendant within five days of the issuance of the summons at a time reasonably  
25 calculated to find the defendant at the place of abode to attempt personal delivery of  
26 service. He then shall deliver a copy of the summons together with a copy of the  
27 complaint to the defendant, or leave copies thereof at the defendant's dwelling house or  
28 usual place of abode with some person of suitable age and discretion then residing  
29 therein. If such service cannot be made the officer shall affix copies to some conspicuous  
30 part of the premises claimed and make due return showing compliance with this section."

31 Sec. 4. G.S. 42-36.2 reads as rewritten:

32 **"§ 42-36.2. Notice to tenant of execution of writ for possession of property; storage**  
33 **or removal of evicted tenant's personal property.**

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

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

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

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

12       (b)    Sheriff May Store or Remove Property. – When the sheriff removes the  
13 personal property of an evicted tenant from demised premises pursuant to a writ or order  
14 the tenant shall take possession of his property. If the tenant fails or refuses to take  
15 possession of his property, the sheriff may deliver the property to any storage warehouse  
16 in the county, or in an adjoining county if no storage warehouse is located in that county,  
17 for storage. The sheriff may require the landlord to advance the cost of delivering the  
18 property to a storage warehouse plus the cost of one month's storage before delivering the  
19 property to a storage warehouse. ~~If a landlord refuses to advance these costs when~~  
20 ~~requested to do so by the sheriff, the sheriff shall not remove the tenant's property, but~~  
21 ~~shall return the writ unexecuted to the issuing clerk of court with a notation thereon of his~~  
22 ~~reason for not executing the writ.~~ All costs of summary ejectment, execution and storage  
23 proceedings shall be charged to the tenant as court costs and shall constitute a lien against  
24 the stored property or a claim against any remaining balance of the proceeds of a  
25 warehouseman's lien sale.

26       At the landlord's request, the sheriff shall, instead of storing any property which  
27 collectively can be placed in a 20-gallon plastic container, enclose the property in such a  
28 container provided by the landlord and place the property at the nearest public right-of-  
29 way where it will not impede pedestrian or vehicular traffic. The sheriff shall notify the  
30 county or municipality of such action, and shall affix a conspicuous, dated notice to the  
31 property stating that, on the orders of the sheriff, no person other than the owner of the  
32 property may remove the property from the public right-of-way for seven days after its  
33 placement there by the sheriff. No county or municipal employee shall remove the  
34 property from the public right-of-way for seven days after its placement there by the  
35 sheriff. A landlord making such a request of the sheriff shall secure the premises during  
36 the seven-day time period if property of the tenant that cannot be placed in a 20-gallon  
37 plastic container remains on the premises. At the expiration of the seven-day period, the  
38 landlord may dispose of the property by any lawful means without liability to the tenant  
39 or the owner of any of the property.

40       (c)    Liability of the Sheriff. – A sheriff who stores a tenant's property or places the  
41 property at the nearest public right-of-way at the landlord's request pursuant to this  
42 section and any person acting under the sheriff's direction, control, or employment shall

1 be liable for any claims arising out of the willful or wanton negligence in storing or  
2 handling the tenant's property.

3 (d) Notice. – The notice required by subsection (a) shall inform the tenant that  
4 failure to take possession of any property on the premises at the time of execution may  
5 result in removal of the property and placement of the property at the nearest public right-  
6 of-way. Notice shall be made by one of the following methods:

7 (1) By delivering a copy of the notice to the tenant or his authorized agent  
8 at least two days before the time stated in the notice for serving the writ;

9 (2) By leaving a copy of the notice at the tenant's dwelling or usual place of  
10 abode with a person of suitable age and discretion who resides there at  
11 least two days before the time stated in the notice for serving the writ; or

12 (3) By mailing a copy of the notice by first-class mail to the tenant at his  
13 last known address at least five days before the time stated in the notice  
14 for serving the writ."

15 Sec. 5. G.S. 42-37.1 reads as rewritten:

16 "**§ 42-37.1. Defense of retaliatory eviction.**

17 (a) It is the public policy of the State of North Carolina to protect tenants and other  
18 persons whose residence in the household is explicitly or implicitly known to the  
19 landlord, who seek to exercise their rights to decent, safe, and sanitary housing.  
20 Therefore, the following activities of such persons are protected by law:

21 (1) A good faith complaint or request for repairs to the landlord, his  
22 employee, or his agent about conditions or defects in the premises that  
23 the landlord is obligated to repair under G.S. 42-42;

24 (2) A good faith complaint to a government agency about a landlord's  
25 alleged violation of any health or safety law, or any regulation, code,  
26 ordinance, or State or federal law that regulates premises used for  
27 dwelling purposes;

28 (3) A government authority's issuance of a formal complaint to a landlord  
29 concerning premises rented by a tenant;

30 (4) A good faith attempt to exercise, secure or enforce any rights existing  
31 under a valid lease or rental agreement or under State or federal law; or

32 (5) A good faith attempt to organize, join, or become otherwise involved  
33 with, any organization promoting or enforcing tenants' rights.

34 (b) In an action for summary ejectment pursuant to G.S. 42-26, a tenant may raise  
35 the affirmative defense of retaliatory eviction and may present evidence that the  
36 landlord's action is substantially in response to the occurrence within ~~12~~six months of the  
37 filing of such action of one or more of the protected acts described in subsection (a) of  
38 this section.

39 (c) Notwithstanding subsections (a) and (b) of this section, a landlord may prevail  
40 in an action for summary ejectment if:

41 (1) The tenant breached the covenant to pay rent or any other substantial  
42 covenant of the lease for which the tenant may be evicted, and such  
43 breach is the reason for the eviction; or

- 1           (2) In a case of a tenancy for a definite period of time where the tenant has  
2 no option to renew the lease, the tenant holds over after expiration of the  
3 term; or  
4           (3) The violation of G.S. 42-42 complained of was caused primarily by the  
5 willful or negligent conduct of the tenant, member of the tenant's  
6 household, or their guests or invitees; or  
7           (4) Compliance with the applicable building or housing code requires  
8 demolition or major alteration or remodeling that cannot be  
9 accomplished without completely displacing the tenant's household; or  
10          (5) The landlord seeks to recover possession on the basis of a good faith  
11 notice to quit the premises, which notice was delivered prior to the  
12 occurrence of any of the activities protected by subsections (a) and (b)  
13 of this section; or  
14          (6) The landlord seeks in good faith to recover possession at the end of the  
15 tenant's term for use as the landlord's own abode, to demolish or make  
16 major alterations or remodeling of the dwelling unit in a manner that  
17 requires the complete displacement of the tenant's household, or to  
18 terminate for at least six months the use of the property as a rental  
19 dwelling unit."

20           Sec. 6. This act becomes effective July 1, 1995, and applies to leases entered  
21 into on or after that date.