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HOUSE BILL 802  
Committee Substitute Favorable 5/8/13  
Third Edition Engrossed 5/13/13

Short Title: Landlord/Tenant/Shorten Eviction Time.

(Public)

Sponsors:

Referred to:

April 11, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT AMENDING THE LAWS RELATED TO LANDLORD AND TENANT  
3 RELATIONSHIPS TO SHORTEN THE TIME PERIOD REQUIRED TO EVICT A  
4 TENANT.

5 The General Assembly of North Carolina enacts:

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

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

8 (a) Trial of a small claim action before a magistrate is without a jury. The rules of  
9 evidence applicable in the trial of civil actions generally are observed. At the conclusion of  
10 plaintiff's evidence the magistrate may render judgment of dismissal if plaintiff has failed to  
11 establish a prima facie case. If a judgment of dismissal is not rendered the defendant may  
12 introduce evidence. At the conclusion of all the evidence the magistrate may render judgment  
13 or may in his discretion reserve judgment for a period not in excess of 10 ~~days.~~ days, except as  
14 provided in subsection (b) of this section.

15 (b) In a small claim action for summary ejectment, the magistrate shall render judgment  
16 on the same day on which the conclusion of all the evidence and submission of legal authorities  
17 occurs, unless the parties concur on an extension of additional time for entering the judgment  
18 and except for more complex summary ejectment cases, in which event the magistrate shall  
19 render judgment within five business days of the hearing. Complex summary ejectment cases  
20 include cases brought for criminal activity, breaches other than nonpayment of rent, evictions  
21 involving SECTION 8 of the Housing Act of 1937 (42 U.S.C. § 1437f) or public housing  
22 tenants, and cases with counterclaims."

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

24 "**§ 7A-223. Practice and procedure in small claim actions for summary ejectment.**

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



1 receipt of the notice, and the defendant, in his answer, may request trial by jury. Failure to  
2 request jury trial within the time limited is a waiver of the right to trial by jury.

3 (b) If either party in a small claim action for summary ejectment moves for a  
4 continuance, the magistrate shall render a decision on the motion in accordance with Rule 40(b)  
5 of the Rules of Civil Procedure. The magistrate shall not continue a matter for more than five  
6 days or until the next session of small claims court, whichever is longer, without the consent of  
7 both parties."

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

9 **"§ 7A-228. New trial before magistrate; appeal for trial de novo; how appeal perfected;**  
10 **oral notice; dismissal.**

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

25 (b) The appeal shall be perfected by (1) oral announcement of appeal in open court; or  
26 (2) by filing notice of appeal in the office of the clerk of superior court within 10 days after  
27 entry of judgment pursuant to subsection (a), and by serving a copy of the notice of appeal on  
28 all parties pursuant to G.S. 1A-1, Rule 5. Failure to pay the costs of court to appeal within 10  
29 days after entry of judgment in a summary ejectment action, and within 20 days after entry of  
30 judgment in all other actions, shall result in the automatic dismissal of the appeal.  
31 Notwithstanding the foregoing deadlines, if an appealing party petitions to qualify as an  
32 indigent for the appeal and is denied, that party shall have an additional five days to perfect the  
33 appeal by paying the court costs. The failure to demand a trial by jury in district court by the  
34 appealing party before the time to perfect the appeal has expired is a waiver of the right thereto.

35 (b1) A person desiring to appeal as an indigent shall, within 10 days of entry of judgment  
36 by the magistrate, file an affidavit that he or she is unable by reason of poverty to pay the costs  
37 of appeal. Within 20 days after entry of judgment, a superior or district court judge, magistrate,  
38 or the clerk of the superior court may authorize a person to appeal to district court as an  
39 indigent if the person is unable to pay the costs of appeal. The clerk of superior court shall  
40 authorize a person to appeal as an indigent if the person files the required affidavit and meets  
41 one or more of the criteria listed in G.S. 1-110. A superior or district court judge, a magistrate,  
42 or the clerk of the superior court may authorize a person who does not meet any of the criteria  
43 listed in G.S. 1-110 to appeal as an indigent if the person cannot pay the costs of appeal.

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

48 (c) Whenever such appeal is docketed and is regularly set for trial, and the appellant  
49 fails to appear and prosecute his appeal, the presiding judge may have the appellant called and  
50 the appeal dismissed; and in such case the judgment of the magistrate shall be affirmed. In any  
51 action for summary ejectment, the defendant shall do all of the following:

- 1           (1) File a notice of appeal and perfect the appeal in accordance with
- 2           G.S. 7A-228(b).
- 3           (2) Raise a defense orally or in writing in the small claims court.
- 4           (3) File a motion, an answer, or a counterclaim in the district court action.
- 5           (4) Make any payment when due under the bond to stay execution of the
- 6           magistrate's judgment.

7 If the defendant fails to comply with all of the requirements listed in subdivisions (1) through  
8 (4) of this subsection, the plaintiff may file a motion to dismiss the appeal. The court shall grant  
9 the motion to dismiss without a hearing if all of the following conditions are met: (i) the motion  
10 states that the defendant has failed to comply with subdivisions (1) through (4) of subsection  
11 (c) of this section, (ii) the motion states that the court may decide the motion to dismiss without  
12 a hearing if the defendant does not file a responsive pleading or pay the required bond payment  
13 within 10 days after service of the motion, and (iii) the defendant fails to serve the response or  
14 make the payment within the time permitted."

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

16 **"§ 42-25.9. Remedies.**

17           ...

18           (g) ~~Ten~~Seven days after being placed in lawful possession by execution of a writ of  
19 possession, a landlord may ~~throw away, dispose of, or sell all items~~ of personal property  
20 remaining on the ~~premises, premises~~ in accordance with the provisions of this section and  
21 G.S. 42-36.2(b), except that in the case of the lease of a space for a manufactured home as  
22 defined in G.S. 143-143.9(6), G.S. 44A-2(e2) shall apply to the disposition of a manufactured  
23 home with a current value in excess of five hundred dollars (\$500.00) and its contents by a  
24 landlord after being placed in lawful possession by execution of a writ of possession. During  
25 the ~~10-day~~seven business-day period after being placed in lawful possession by execution of a  
26 writ of possession, a landlord may move for storage purposes, but shall not throw away,  
27 dispose of, or sell any items of personal property remaining on the premises unless otherwise  
28 provided for in this Chapter. Upon the tenant's request prior to the expiration of the  
29 ~~10-day~~seven business-day period, the landlord shall release possession of the property to the  
30 tenant during regular business hours or at a time agreed upon. If the landlord elects to sell the  
31 property at public or private sale, the landlord shall give written notice to the tenant by  
32 first-class mail to the tenant's last known address at least seven days prior to the day of the sale.  
33 The seven-day notice of sale may run concurrently with the ~~10-day~~seven business-day period  
34 which allows the tenant to request possession of the property. The written notice shall state the  
35 date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment  
36 of unpaid rents, damages, storage fees, and sale costs, shall be disbursed to the tenant, upon  
37 request, within ~~10~~seven business days after the sale, and will thereafter be delivered to the  
38 government of the county in which the rental property is located. Upon the tenant's request  
39 prior to the day of sale, the landlord shall release possession of the property to the tenant during  
40 regular business hours or at a time agreed upon. The landlord may apply the proceeds of the  
41 sale to the unpaid rents, damages, storage fees, and sale costs. Any surplus from the sale shall  
42 be disbursed to the tenant, upon request, within ~~10~~seven business days of the sale and shall  
43 thereafter be delivered to the government of the county in which the rental property is located.

44           (h) If the total value of all property remaining on the premises at the time of execution  
45 of a writ of possession in an action for summary ejectment is less than five hundred dollars  
46 (\$500.00), the property shall be deemed abandoned five days after the time of execution, and  
47 the landlord may throw away or dispose of the property. Upon the tenant's request prior to the  
48 expiration of the five-day period, the landlord shall release possession of the property to the  
49 tenant during regular business hours or at a time agreed upon."

50           **SECTION 5.** G.S. 42-36.2 reads as rewritten:

1 "§ 42-36.2. Notice to tenant of execution of writ for possession of property; storage of  
2 evicted tenant's personal property.

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

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

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

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

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

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

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

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

14 **SECTION 6.** The Administrative Office of the Courts is directed to develop a form  
15 for parties in small claim actions for summary ejectment to inform them of the time line and  
16 process in summary ejectment actions. The Clerk of Superior Court shall make the form  
17 available to the parties.

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