

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

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

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

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

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

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

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

- (1) By delivering a copy of the notice to the tenant or his authorized agent at least two days before the time stated in the notice for serving the writ;
- (2) By leaving a copy of the notice at the tenant's dwelling or usual place of abode with a person of suitable age and discretion who resides there at least two days before the time stated in the notice for serving the writ; or
- (3) By mailing a copy of the notice by first-class mail to the tenant at his last known address at least five days before the time stated in the notice for serving the writ. (1983, c. 672, s. 1; 1995, c. 460, s. 6; 1999-278, ss. 3, 4; 2013-334, s. 5; 2015-55, s. 1.)