

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

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**HOUSE BILL 493**

Short Title: Landlord Tenant Law Changes. (Public)

Sponsors: Representatives Howard, Blust, and Randleman (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee A.

March 29, 2011

A BILL TO BE ENTITLED  
AN ACT AMENDING THE LAWS RELATED TO LANDLORD TENANT  
RELATIONSHIPS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 42-26(a) reads as rewritten:

**"§ 42-26. Tenant holding over may be dispossessed in certain cases.**

(a) Any tenant or lessee of any house or land, and the assigns under the tenant or legal representatives of such tenant or lessee, who holds over and continues in the possession of the demised premises, or any part thereof, without the permission of the landlord, and after demand made for its surrender, may be removed from such premises in the manner hereinafter prescribed in any of the following cases:

- (1) When a tenant in possession of real estate holds over after his term has expired.
- (2) When the tenant or lessee, or other person under him, has done or omitted any act by which, according to the stipulations of the lease, his estate has ceased.
- (3) When any tenant or lessee of lands or tenements, who is in arrear for rent or has agreed to cultivate the demised premises and to pay a part of the crop to be made thereon as rent, or who has given to the lessor a lien on such crop as a security for the rent, deserts the demised premises, and leaves them unoccupied and uncultivated.

(4) When the sole tenant or lessee under the terms of a written lease dies and the tenant's or lessee's personal property remains in the demised premises, a landlord may bring an action for summary ejectment under the following conditions:

- a. For the purpose of establishing in rem jurisdiction only, no action to administer an estate or to appoint an administrator or receiver under Chapter 28A, 28B, or 28C of the General Statutes shall have to be filed prior to the bringing of the action for summary judgment to repossess the demised premises and to remove or dispose of the deceased tenant's personal property. No money judgment may be awarded a landlord in an action brought under the provisions of this subdivision, however, a landlord shall have the right to file a separate monetary claim against the estate of the deceased tenant relating to any damages to the demised premises exceeding normal wear and



1 tear and for the recovery of any rents accrued through the date the  
2 landlord obtains possession of, and is lawfully permitted to remove  
3 all personal property from, the demised premises.

4 b. Without regard to whether an action to administer an estate or to  
5 appoint an administrator or receiver under Chapter 28A, 28B, or 28C  
6 of the General Statutes has commenced, the complaint in an action  
7 brought under this subdivision shall provide the name of the  
8 deceased tenant or lessee in the following manner: "In re the estate  
9 of ---- (name)."

10 c. Neither the commencing of an action to administer an estate or to  
11 appoint an administrator or receiver under Chapter 28A, 28B, or 28C  
12 of the General Statutes nor any other laws related to the disposition  
13 of the estate of the deceased tenant or lessee shall prohibit, delay, or  
14 impair a landlord's ability to bring a summary ejectment action under  
15 this subdivision or to throw away, dispose of, or sell items of  
16 personal property of the deceased tenant or lessee as provided in  
17 G.S. 42-25.9."

18 **SECTION 2.** G.S. 42-25.7 reads as rewritten:

19 **"§ 42-25.7. Distress and distraint not permitted.**

20 (a) It is the public policy of the State of North Carolina that distress and distraint are  
21 prohibited and that landlords of residential rental property shall have rights concerning the  
22 personal property of their residential tenants only in accordance with G.S. 42-25.9(d),  
23 42-25.9(g), 42-25.9(h), or 42-36.2.

24 (b) Notwithstanding the provisions of subsection (a) of this section as it relates to  
25 landlords' rights concerning the personal property of their residential tenants, a landlord may  
26 permit the next of kin of a deceased residential tenant or lessee to enter the leased dwelling unit  
27 and remove personal property if all of the following are met:

28 (1) The deceased residential tenant or lessee was the sole tenant or lessee in the  
29 dwelling unit.

30 (2) The next of kin seeking entry into the dwelling unit can establish by a birth  
31 certificate, drivers license, estate document, or other reasonably reliable  
32 information that he or she is a parent, child, or sibling of the deceased  
33 residential tenant or lessee.

34 (c) A landlord who, in good faith, permits the next of kin of a deceased residential  
35 tenant or lessee to enter the leased dwelling unit and remove personal property as authorized in  
36 subsection (b) of this section shall be immune from any civil or criminal liability that might  
37 otherwise be incurred or imposed.

38 (d) Nothing in subsection (b) or (c) of this section shall do any of the following:

39 (1) Impose a duty or obligation on a landlord to permit the next of kin of a  
40 deceased residential tenant or lessee to enter the leased dwelling unit or to  
41 remove personal property from the leased dwelling unit.

42 (2) Cause the landlord to be liable in any way to the next of kin of a deceased  
43 residential tenant or lessee.

44 (3) Prevent the landlord from bringing a summary ejectment action under  
45 G.S. 42-26(a)."

46 **SECTION 3.** G.S. 42-29 reads as rewritten:

47 **"§ 42-29. Service of summons.**

48 The officer or authorized process server receiving the summons shall mail a copy of the  
49 summons and complaint to the defendant no later than the end of the next business day or as  
50 soon as practicable at the defendant's last known address in a stamped addressed envelope  
51 provided by the plaintiff to the action. The officer or authorized process server may, within five

1 days of the issuance of the summons, attempt to telephone the defendant requesting that the  
2 defendant either personally visit the officer or authorized process server to accept service, or  
3 schedule an appointment for the defendant to receive delivery of service from the ~~officer-officer~~  
4 or authorized process server. If the officer or authorized process server does not attempt to  
5 telephone the defendant or the attempt is unsuccessful or does not result in service to the  
6 defendant, the officer or authorized process server shall make at least one visit to the place of  
7 abode of the defendant within five days of the issuance of the summons, but at least two days  
8 prior to the day the defendant is required to appear to answer the complaint, excluding legal  
9 holidays, at a time reasonably calculated to find the defendant at the place of abode to attempt  
10 personal delivery of service. ~~He~~The officer or authorized process server then shall deliver a  
11 copy of the summons together with a copy of the complaint to the defendant, or leave copies  
12 thereof at the defendant's dwelling house or usual place of abode with some person of suitable  
13 age and discretion then residing therein. If such service cannot be made by the officer, the  
14 officer shall affix copies to some conspicuous part of the premises claimed and make due return  
15 showing compliance with this section. If such service cannot be made by the authorized process  
16 server, the authorized process server shall affix copies to some conspicuous part of the  
17 premises claimed and file an affidavit of service in the office of the clerk of the superior court  
18 in the pending action, which shall be conclusive evidence that the summons was served as  
19 required by this section. For purposes of this section, the term "authorized process server"  
20 means a person who is at least 21 years old and is not any of the following: (i) employed by the  
21 plaintiff; (ii) related by blood to the plaintiff; or (iii) an attorney or an employee of a law firm."

22 **SECTION 4.** G.S. 42-34 reads as rewritten:

23 **"§ 42-34. Undertaking on appeal and order staying execution.**

24 ...

25 (b) During an appeal to district court, it shall be sufficient to stay execution of a  
26 judgment for ejection if the defendant appellant pays to the clerk of superior court any rent in  
27 arrears as determined by the magistrate and signs an undertaking that he or she will pay into the  
28 office of the clerk of superior court the amount of the tenant's share of the contract rent as it  
29 becomes due periodically after the judgment was ~~entered and~~, entered, reasonable damages that  
30 the landlord may suffer, the costs of the pending action and, where applicable, comply with  
31 ~~subdivision (c) below~~sub-section (c) of this section. For the sole purpose of determining the  
32 amount of rent in arrears pursuant to a judgment for possession pursuant to G.S. 42-30(iii), the  
33 magistrate's determination shall be based upon (i) the available evidence presented to the  
34 magistrate or (ii) the amounts listed on the face of the filed Complaint in Summary Ejection.  
35 Provided however, when the magistrate makes a finding in the record, based on evidence  
36 presented in court, that there is an actual dispute as to the amount of rent in arrears that is due  
37 and the magistrate specifies the specific amount of rent in arrears in dispute, in order to stay  
38 execution of a judgment for ejection, the defendant appellant shall not be required to pay to  
39 the clerk of superior court the amount of rent in arrears found by the magistrate to be in dispute,  
40 even if the magistrate's judgment includes this amount in the amount of rent found to be in  
41 arrears. If a defendant appellant appeared at the hearing before the magistrate and the  
42 magistrate found an amount of rent in arrears that was not in dispute, and if an attorney  
43 representing the defendant appellant on appeal to the district court signs a pleading stating that  
44 there is evidence of an actual dispute as to the amount of rent in arrears, then the defendant  
45 appellant shall not be required to pay the rent in arrears alleged to be in dispute to stay  
46 execution of a judgment for ejection pending appeal. Any magistrate, clerk, or district court  
47 judge shall order stay of execution upon the defendant appellant's paying the undisputed rent in  
48 arrears to the clerk and signing the undertaking. If either party disputes the amount of the  
49 payment or the due date in the undertaking, the aggrieved party may move for modification of  
50 the terms of the undertaking before the clerk of superior court or the district court. Upon such  
51 motion and upon notice to all interested parties, the clerk or court shall hold a hearing within 10

1 calendar days of the date the motion is filed and determine what modifications, if any, are  
2 appropriate. No writ of possession or other execution of the magistrate's judgment shall take  
3 place during the time the aggrieved party's motion for modification is pending before the clerk  
4 of court.

5 ...."

6 **SECTION 5.** G.S. 42-34.1 reads as rewritten:

7 **"§ 42-34.1. Rent pending execution of judgment; post bond pending appeal.**

8 (a) If the judgment in district court is against the defendant appellant, it shall be  
9 sufficient to stay execution of the judgment during the 30-day time period for taking an appeal  
10 provided for in Rule 3 of the North Carolina Rules of Appellate Procedure if the defendant  
11 appellant posts a bond as provided in G.S. 42-34(b). If the defendant appellant fails to make  
12 rental payments as provided in the undertaking within five days of the day rent is due under the  
13 terms of the residential rental agreement, the clerk of superior court shall, upon application of  
14 the plaintiff appellee, immediately issue a writ of possession and the sheriff shall dispossess the  
15 defendant appellant as provided in G.S. 42-36.2.

16 (a1) If the judgment in district court is against the defendant appellant and the defendant  
17 appellant does not appeal the judgment, the defendant appellant shall pay rent to the plaintiff  
18 for the time the defendant appellant remains in possession of the premises after the judgment is  
19 given. Rent shall be prorated if the judgment is executed before the day rent would become due  
20 under the terms of the lease. The clerk of court shall disperse any rent in arrears paid by the  
21 defendant appellant in accordance with a stipulation executed by all parties or, if there is no  
22 stipulation, in accordance with the judge's order.

23 (b) If the judgment in district court is against the defendant appellant and the defendant  
24 appellant appeals the judgment, it shall be sufficient to stay execution of the judgment if the  
25 defendant appellant posts a bond as provided in G.S. 42-34(b). If the defendant appellant fails  
26 to perfect the appeal or the appellate court upholds the judgment of the district court, the  
27 execution of the judgment shall proceed. The clerk of court shall not disperse any rent in  
28 arrears paid by the defendant appellant until all appeals have been resolved."

29 **SECTION 6.** G.S. 42-36.2 reads as rewritten:

30 **"§ 42-36.2. Notice to tenant of execution of writ for possession of property; storage of**  
31 **evicted tenant's personal property.**

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

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

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

50 (b) Sheriff May Store Property. – When the sheriff removes the personal property of an  
51 evicted tenant from demised premises pursuant to a writ or order the tenant shall take

1 possession of his property. If the tenant fails or refuses to take possession of his property, the  
2 sheriff may deliver the property to any storage warehouse in the county, or in an adjoining  
3 county if no storage warehouse is located in that county, for storage. The sheriff may require  
4 the landlord to advance the cost of delivering the property to a storage warehouse plus the cost  
5 of one month's storage before delivering the property to a storage warehouse. If a landlord  
6 refuses to advance these costs when requested to do so by the sheriff, the sheriff shall not  
7 remove the tenant's property, but shall return the writ unexecuted to the issuing clerk of court  
8 with a notation thereon of his reason for not executing the writ. Except for the disposition of  
9 manufactured homes and their contents as provided in G.S. 42-25.9(g) and G.S. 44A-2(e2),  
10 within ~~10-five~~ days of the landlord's being placed in lawful possession by execution of a writ of  
11 possession and upon the tenant's request within that ~~10-day~~ five-day period, the landlord shall  
12 release possession of the property to the tenant during regular business hours or at a time  
13 agreed upon. During the ~~10-day~~ five-day period after being placed in lawful possession by  
14 execution of a writ of possession, a landlord may move for storage purposes, but shall not  
15 throw away, dispose of, or sell any items of personal property remaining on the premises unless  
16 otherwise provided for in this Chapter. After the expiration of the ~~10-day~~ five-day period, the  
17 landlord may throw away, dispose of, or sell the property in accordance with the provisions of  
18 G.S. 42-25.9(g). If the tenant does not request release of the property within ~~10-five~~ days, all  
19 costs of summary ejectment, execution and storage proceedings shall be charged to the tenant  
20 as court costs and shall constitute a lien against the stored property or a claim against any  
21 remaining balance of the proceeds of a warehouseman's lien sale.

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

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

- 31 (1) By delivering a copy of the notice to the tenant or his authorized agent at  
32 least two days before the time stated in the notice for serving the writ;
- 33 (2) By leaving a copy of the notice at the tenant's dwelling or usual place of  
34 abode with a person of suitable age and discretion who resides there at least  
35 two days before the time stated in the notice for serving the writ; or
- 36 (3) By mailing a copy of the notice by first-class mail to the tenant at his last  
37 known address at least five days before the time stated in the notice for  
38 serving the writ."

39 **SECTION 7.** G.S. 42-44 reads as rewritten:

40 **"§ 42-44. General remedies, penalties, and limitations.**

41 (a) Any right or obligation declared by this Chapter is enforceable by civil action, in  
42 addition to other remedies of law and in equity.

43 (a1) If a landlord fails to provide, install, replace, or repair a smoke detector under the  
44 provisions of G.S. 42-42(a)(5) or a carbon monoxide detector under the provisions of  
45 G.S. 42-42(a)(7) within 30 days of having received written notice from the tenant or any agent  
46 of State or local government of the landlord's failure to do so, the landlord shall be responsible  
47 for an infraction and shall be subject to a fine of not more than two hundred fifty dollars  
48 (\$250.00) for each violation. The landlord may temporarily disconnect a smoke detector or  
49 carbon monoxide detector in a dwelling unit or common area for construction or rehabilitation  
50 activities when such activities are likely to activate the smoke detector or carbon monoxide  
51 detector or make it inactive.

1 (a2) If a smoke detector or carbon monoxide detector is disabled or damaged, other than  
2 through actions of the landlord, the landlord's agents, or acts of God, the tenant shall reimburse  
3 the landlord the reasonable and actual cost for repairing or replacing the smoke detector or  
4 carbon monoxide detector within 30 days of having received written notice from the landlord or  
5 any agent of State or local government of the need for the tenant to make such reimbursement.  
6 If the tenant fails to make reimbursement within 30 days, the tenant shall be responsible for an  
7 infraction and subject to a fine of not more than one hundred dollars (\$100.00) for each  
8 violation. The tenant may temporarily disconnect a smoke detector or carbon monoxide  
9 detector in a dwelling unit to replace the batteries or when it has been inadvertently activated.

10 (b) Repealed by Session Laws 1979, c. 820, s. 8.

11 (c) The tenant may not unilaterally withhold rent prior to a judicial determination of a  
12 right to do so.

13 (d) A violation of this Article shall not constitute negligence per se.

14 (e) A landlord's acceptance of any rent or housing subsidy payment, where the payment  
15 is less than the full amount owed by the tenant pursuant to a lease between the parties, shall  
16 never be a defense to a summary ejectment action filed pursuant to G.S. 42-26.

17 (f) A landlord's acceptance of any rent or housing subsidy payment shall not constitute  
18 an unfair and deceptive trade practice under Chapter 75 of the General Statutes."

19 **SECTION 8.** G.S. 42-50 reads as rewritten:

20 "**§ 42-50. Deposits from the tenant.**

21 Security deposits from the tenant in residential dwelling units shall be deposited in a trust  
22 account ~~with a licensed and insured bank or savings institution located in the State of North~~  
23 ~~Carolina or the~~ that is a demand deposit account in a federally insured bank, lawfully doing  
24 business in the State of North Carolina, which agrees to make its records of the accounts  
25 available for inspection by the North Carolina Real Estate Commission. In the alternative, a  
26 landlord may, at his option, may furnish a bond from an insurance company licensed to do  
27 business in North Carolina. The security deposits from the tenant may be held in a trust account  
28 outside of the State of North Carolina only if the landlord provides the tenant with an adequate  
29 bond in the amount of said deposits. The landlord or his agent shall notify the tenant within 30  
30 days after the beginning of the lease term of the name and address of the bank or institution  
31 where his deposit is currently located or the name of the insurance company providing the  
32 bond."

33 **SECTION 9.** G.S. 42-51 reads as rewritten:

34 "**§ 42-51. Permitted uses of the deposit.**

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

37 (1) The tenant's possible nonpayment of rent and costs for water or sewer  
38 services provided pursuant to ~~G.S. 62-110(g), G.S. 62-110(g).~~

39 (2) ~~damage~~ Damage to the premises, including damage to or destruction of  
40 smoke detectors or carbon monoxide detectors.

41 (3) ~~nonfulfillment of rental period,~~ Nonfulfillment of the rental period.

42 (4) ~~any~~ Any unpaid bills that become a lien against the demised property due to  
43 the tenant's ~~occupancy,~~ occupancy.

44 (5) The costs of re-renting the premises after breach by the tenant, including any  
45 fees or commissions paid by the landlord to a licensed real estate broker to  
46 re-rent the premises.

47 (6) The costs of removal and storage of the tenant's property after a summary  
48 ejectment ~~proceeding or~~ proceeding.

49 (7) ~~court costs in connection with terminating a tenancy.~~ Court costs.

50 (8) Any fee permitted by G.S. 42-46.

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

5           **SECTION 10.** G.S. 42A-11(b) reads as rewritten:

6       **"(b)** The vacation rental agreement shall contain provisions separate from the  
7 requirements of subsection (a) of this section which shall describe the following as permitted or  
8 required by this Chapter:

9           (1) The manner in which funds shall be received, deposited, and disbursed in  
10 advance of the tenant's occupancy of the property.

11           (2) Any processing fees permitted under G.S. 42A-17(c).

12           **(2a)** Any cleaning fee permitted under G.S. 42A-17(d).

13           (3) The rights and obligations of the landlord and tenant under G.S. 42A-17(b).

14           (4) The applicability of expedited eviction procedures.

15           (5) The rights and obligations of the landlord or real estate broker and the tenant  
16 upon the transfer of the property.

17           (6) The rights and obligations of the landlord or real estate broker and the tenant  
18 under G.S. 42A-36.

19           (7) Any other obligations of the landlord and tenant."

20           **SECTION 11.** G.S. 42A-17 is amended by adding a new subsection to read:

21       **"(d)** A vacation rental agreement may include a cleaning fee, the amount of which shall  
22 be provided in the agreement, reasonably calculated to cover the costs of cleaning the  
23 residential property upon the termination of the tenancy."

24           **SECTION 12.** This act becomes effective October 1, 2011, and applies to all  
25 actions for summary ejectment occurring on and after that date and to all residential rental  
26 agreements entered into on or after that date.