

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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HOUSE BILL 1549

Short Title: Clarify Laws Governing Execution on Judgments. (Public)

Sponsors: Representatives McGee and Stam (Primary Sponsors).

Referred to: Judiciary II.

April 18, 2007

A BILL TO BE ENTITLED
AN ACT TO CLARIFY THAT ENCUMBERED PROPERTY IS SUBJECT TO
EXECUTION UNDER ARTICLE 28 OF CHAPTER 1 OF THE GENERAL
STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-313(1) reads as rewritten:

"§ 1-313. Form of execution.

The execution must be directed to the sheriff, or to the coroner when the sheriff is a party to or interested in the action. In those counties where the office of coroner is abolished, or is vacant, and in which process is required to be executed on the sheriff, the authority to execute such process shall be vested in the clerk of court; however, the clerk of court is hereby empowered to designate and direct by appropriate order some person to act in his stead to execute the same. The execution must also be subscribed by the clerk of the court, and must refer to the judgment, stating the county where the judgment roll or transcript is filed, the names of the parties, the amount of the judgment, if it is for money, the amount actually due thereon, and the time of docketing in the county to which the execution is issued, and shall require the officer substantially as follows:

(1) ~~Against Property—property.~~

a. No Lien on Personal Property until Levy. – If it is against the property of the judgment debtor, it shall require the officer to satisfy the judgment out of his personal property; and if sufficient personal property cannot be found, out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter; but no execution against the property of a judgment debtor is a lien on his personal property, as against any bona fide purchaser from him for value, or as against any other execution, except from the levy thereof.

1 b. Real or personal property required to satisfy the judgment is
2 subject to execution regardless of whether the property is
3 encumbered. However, any personal or real property sold under
4 execution remains subject to all prior encumbrances, including
5 liens, mortgages, deeds of trust, perfected security interests, and
6 prior judgments which became effective prior to the lien of the
7 judgment pursuant to which the execution sale is held, in the
8 same manner and to the same extent as if no such sale had been
9 held."

10 **SECTION 2.** This act becomes effective October 1, 2007.