



HOUSE BILL 315: Sheriff and Landlord/Tenant-Writs of Possession Changes

2015-2016 General Assembly

Committee:
Introduced by:
Analysis of: S.L. 2015-55

Date:
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Staff Attorney

SUMMARY: *S.L. 2015-55 revises the procedure for executing a writ of possession in summary ejectment proceedings, modifies the requirement for advance payment of certain uniform civil process fees, and requires the plaintiff in a claim and delivery action to pay a fee deposit to the sheriff upon the issuance of an order for seizure of personal property.*

This act became effective October 1, 2015.

CURRENT LAW: Under G.S. 42-36.2(a), a sheriff executing a writ of possession in favor of the landlord is required to remove the tenant's personal property as provided in the writ unless the sheriff has received from the landlord or the landlord's agent a signed statement saying either:

- that the tenant's property can remain on the premises; or
- that the landlord does not want to eject the tenant because the tenant has paid all court costs and has satisfied his indebtedness to the landlord.

Under current law, if the sheriff receives either of these two signed statements, then the sheriff must return the writ unexecuted and must make a notation on the writ of the reasons why the writ was returned unexecuted.

G.S. 7A-311(b) requires advance payment of all required civil process fees collected in civil actions or special proceedings not brought either *in forma pauperis* and or under Chapter 50B of the General Statutes, except for fees that are contingent on expenses or sales prices.

G.S. 1-474 authorizes the clerk of court to issue plaintiff in a claim and delivery action an order for seizure of personal property after a notice and hearing, and upon the plaintiff giving a written undertaking payable to the defendant pursuant to G.S. 1-475.

G.S. 1-476 provides that upon the sheriff's receipt of an order for seizure with the plaintiff's undertaking, the sheriff shall forthwith take the subject property and retain it in his custody.

G.S. 1-481 requires the sheriff to deliver the seized property to the party entitled to it after being paid the lawful fees for taking it and any expenses necessary to store it.

BILL ANALYSIS: **Section 1** of the act amends G.S. 42-36.2(a) to provide that the writ of possession must be returned unexecuted only when the landlord's statement says that the landlord does not want to eject the tenant because the tenant has paid all court costs and has satisfied his indebtedness to the landlord.

Section 2 amends G.S. 7A-311(b) to delete the exemption currently provided for fees contingent on expenses, and to add an exemption for fees contingent on statutory commissions.

Section 3.(a) amends G.S. 1-474 to require the sheriff to collect a fee deposit from the plaintiff upon issuance of an order for seizure to offset the fees and expenses necessary to take and store the property.



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Section 3.(b) amends G.S. 1-476 to require the sheriff to receive the plaintiff's fee deposit before executing an order for seizure of personal property.

Section 3.(c) of the bill amends G.S. 1-481 to require the sheriff to deliver the seized property to the party entitled to it upon receiving the lawful fees for keeping the property, less the amount of the plaintiff's fee deposit. However, in the event that a third-party intervener is entitled to possession of the property, the sheriff is required to return the fee deposit to the plaintiff.

EFFECTIVE DATE: This act became effective October 1, 2015.