



HOUSE BILL 315: Sheriff & Landlord/Tenant-Writs of

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2015-2016 General Assembly

Committee: House Judiciary III
Introduced by: Rep. Stevens
Analysis of: First Edition

Date: March 31, 2015
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SUMMARY: *House Bill 315 makes a technical correction to landlord/tenant law, requires payment in advance of uniform civil process fees except in suits in forma pauperis, and requires the plaintiff in a claim and delivery action to pay a fee deposit when an order for seizure is issued.*

CURRENT LAW: G.S. 42-25.9 gives a prevailing landlord in a summary ejectment proceeding the right to dispose of personal property that has not been removed by the tenant by the time a writ of possession is executed. Under G.S. 42-36.3(a)(1), if a sheriff executing a writ of possession in a summary ejectment proceeding has received the landlord's written permission to leave the tenant's property on the premises, the sheriff is required to simply lock the premises and to return the writ as unexecuted.

G.S. 7A-311(b) requires that all civil process fees required to be collected under G.S. 7A-311(a) (except in suits in forma pauperis) must be collected in advance except for fees that are contingent on expenses or sales prices.

G.S. 1-474 authorizes the clerk of court to issue an order for seizure of personal property to a plaintiff in a claim and delivery action 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 requires the sheriff, upon receipt of the order for seizure with the plaintiff's undertaking, to take the property subject to the order into the sheriff's 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 necessary expenses for storing it.

BILL ANALYSIS: Section 1 of the bill would amend G.S. 42-25.9 to permit a landlord who prevails in a summary ejectment proceeding to dispose of personal property when the tenant has not removed it by the time the premises is locked by the sheriff pursuant to G.S. 42-36.3(a)(1).

Section 2 of the bill would amend G.S. 7A-311(b) by deleting the language permitting uniform civil process fees contingent on expenses or sales prices not to be paid in advance.

Section 3.(a) of the bill would add a new subsection (c) to G.S. 1-474 applicable to the seizure of property from a defendant pursuant to order in a claim and delivery action, requiring the plaintiff, upon issuance of an order for seizure of property, to pay the clerk a deposit in an amount not to exceed \$100 based on the value of the property, with the fee deposit to be given to the sheriff together with the order and used to offset the fees and necessary expenses of taking and caring for the seized property.

Section 3.(b) of the bill would amend G.S. 1-476 to require the sheriff to receive both the order of seizure and the fee deposit required by new G.S. 1-474(c) before seizing the property.

Section 3.(c) of the bill would amend 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 fee deposit received pursuant to new G.S. 1-474(c). If, however, a third-party intervener is determined to be entitled to the property, the sheriff would be required to return the fee deposit to the.



House Bill 315

Page 2

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