



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

2015-2016 General Assembly

Committee: House Judiciary III
Introduced by: Rep. Stevens
Analysis of: PCS to First Edition
H315-CSTG-14

Date: April 21, 2015
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Committee Counsel

SUMMARY: *The PCS for House Bill 315 makes technical corrections to landlord/tenant law, modifies the requirement for advance payment of certain uniform civil process fees, and requires the plaintiff to pay a fee deposit when an order for seizure is issued in a claim and delivery action. The PCS rewrites Section 1's technical correction to the procedure for execution of writs of possession in summary ejectment proceedings, and modifies Sections 2 and 3.(a) of the bill.*

CURRENT LAW: Under G.S. 42-36.2(a), a writ of possession issued in favor of the landlord is required to be returned unexecuted if the sheriff has received a signed statement from the landlord or the landlord's agent saying either that (1) the tenant's property can remain on the premises, or (2) 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.

G.S. 7A-311(b) requires that all required civil process fees collected under G.S. 7A-311(a) (except in suits brought *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 PCS would amend G.S. 42-36.2(b) to clarify that a writ of possession is not required to be returned unexecuted when the sheriff has received a signed statement from the landlord or landlord's agent permitting the tenant's property to remain on the premises.

Section 2 would amend G.S. 7A-311(b) to modify the exemptions from the requirement that all fees be collected in advance, by deleting the current exemption for fees contingent on expenses, and adding an exemption for fees contingent on statutory commissions.

Section 3.(a) 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 sheriff a deposit to offset the necessary fees and expenses for taking and storing the seized property.

Section 3.(b) would amend G.S. 1-476 to provide that upon the sheriff's receipt of both the order of seizure and the fee deposit required by new G.S. 1-474(c), the sheriff shall seize 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

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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 depositor.

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