



# SENATE BILL 644: Landlord/Tenant Changes.

2021-2022 General Assembly

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<b>Committee:</b>		<b>Date:</b>	February 11, 2022
<b>Introduced by:</b>		<b>Prepared by:</b>	Brian Gwyn*
<b>Analysis of:</b>	S.L. 2021-71		Staff Attorney

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**OVERVIEW:** *S.L. 2021-71 does the following:*

- *Reaffirms the intent of the General Assembly that landlords may recover out-of-pocket expenses and litigation costs in summary ejectment proceedings.*
- *Provides that a tenant's criminal record will not affect the foreseeability of any future injury or damage caused by the tenant, and that a landlord will have no duty to screen a potential renter's criminal history nor refuse to rent to a person because of their criminal record.*
- *Allows authorized persons to direct the removal or disposal of certain personal property of a decedent located in leased premises.*

*The act became effective when it became law (July 2, 2021). Please see the full summary for more detail on applicability.*

## **PART I. CLARIFICATION AND REAFFIRMATION OF RECOVERY OF OUT-OF-POCKET EXPENSES AND LITIGATION COSTS IN SUMMARY EJECTMENTS**

**CURRENT LAW:** Landlords are currently permitted, pursuant to a written lease, to charge and collect either a complaint-filing fee, a court-appearance fee, or a second trial fee in certain circumstances.<sup>1</sup> Landlords are also permitted to charge and recover from a tenant certain actual out-of-pocket expenses, including filing fees charged by the court, certain costs for service of process, and reasonable attorneys' fees incurred, pursuant to a written lease, not to exceed a certain amount.<sup>2</sup>

### **BILL ANALYSIS:**

**Administrative Fees.** – Part I provides that the complaint-filing fee, court-appearance fee, and second trial fee are administrative fees and are the only administrative fees that landlords may charge when filing a complaint for summary ejectment or money owed. This part further provides that out-of-pocket expenses and litigation costs are not administrative fees and that it is contrary to public policy for a landlord to claim, or a lease to provide for the payment of, any out-of-pocket expenses or litigation costs for the filing of a complaint for summary ejectment or money owed other than those expenses authorized under G.S. 42-46(i).

Part I became effective when it became law (July 2, 2021) and is intended to apply retroactively to all pending controversies<sup>3</sup> as of that date. The amendments contained in Part I are intended to clarify the General Assembly's intent under previous amendments to G.S. 42-46.

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<sup>1</sup> G.S. 42-46(e)-(g).

<sup>2</sup> G.S. 42-46(i).

<sup>3</sup> According to [Lexology](#), as of August 2020, at least 17 class action lawsuits challenging eviction fee charges in North Carolina were filed since 2016.

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## PART II. VARIOUS CHANGES TO LANDLORD/TENANT STATUTES

**CURRENT LAW:** Under current law a landlord's rights concerning a residential tenant's personal property are limited to those set forth in statutory provisions cross-referenced in G.S. 42-25.7.

Currently, under G.S. 28A-25-1 (applicable to intestate decedents) and G.S. 28A-25-1.1 (applicable to testate decedents), when a person dies leaving personal property having an unencumbered value not exceeding \$20,000, any person having possession of the decedent's personal property is required to deliver it to a person who claims to be a qualified personal representative of the decedent and who presents a certified copy of an affidavit meeting the requirements set forth in those statutes.

G.S. 28A-25-2 currently provides that a person who delivers the decedent's personal property pursuant to an affidavit meeting the statutory requirements is discharged and released to the same extent as if the person dealt with a duly qualified personal representative of the decedent.

### BILL ANALYSIS:

**Use of Criminal Records.** – Part II enacts G.S. 42-14.5 to provide that the criminal record of any prospective or current residential lessee, occupant, or guest will not make any future injury or damage arising from the lessee, occupant, or guest foreseeable by the lessor or the lessor's agent. The residential lessor or the lessor's agent will not be required to screen for or refuse to rent because of the criminal record of a prospective or current lessee, occupant, or guest. A residential lessor or the lessor's agent will not be prohibited from using a criminal background check as grounds for refusing to rent to any prospective or current lessee.

Part II codifies *Davenport v. D.M. Rental Properties, Inc.*, wherein the N.C. Court of Appeals found that an altercation between two tenants at a mobile home park was not foreseeable and that there was no duty on a landlord to screen potential tenants and no liability for failing to evict a tenant.

**Conforming Change.** – Part II makes a conforming change to this statute by including a cross-reference to G.S. 28A-25-2 as amended this part.

**Personal Property of Decedents.** – Part II amends G.S. 28A-25-1 and G.S. 28A-25-1.1 to provide that a person claiming to be a duly qualified personal representative of the decedent who presents an affidavit meeting the statutory requirements is entitled to remove or otherwise dispose of the decedent's personal property that is located in demised premises.

Part II also amends G.S. 28A-25-2 to provide that a lessor or lessor's agent that removes, discards, or otherwise disposes of the personal property located in demised premises at the direction of an affiant who is statutorily authorized to collect the decedent's personal property, is discharged and released to the same extent as if the lessor dealt with a duly qualified personal representative of the decedent.

**Effective Date and Applicability.** – The provisions related to personal property of decedents became effective when they became law (July 2, 2021) and apply to decedents dying on or after that date. The remainder of Part II became effective when it became law (July 2, 2021).

**EFFECTIVE DATE:** Except as otherwise provided, the act became effective when it became law (July 2, 2021).

*\*Nicholas Giddings and Kristen Harris, Staff Attorneys with the Legislative Analysis Division, substantially contributed to this summary.*