

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 966
Committee Substitute Favorable 6/12/24

Short Title: Expedited Removal of Unauthorized Persons.

(Public)

Sponsors:

Referred to:

May 6, 2024

A BILL TO BE ENTITLED

AN ACT TO CREATE A PROCESS FOR THE EXPEDITED REMOVAL OF
UNAUTHORIZED PERSONS FROM RESIDENTIAL REAL PROPERTY BY THE
SHERIFF; TO INCREASE THE PUNISHMENT FOR WILLFUL AND WANTON
DAMAGE TO THE RESIDENTIAL REAL PROPERTY OF ANOTHER; AND TO
PROHIBIT THE FRAUDULENT RENTAL, LEASE, OR ADVERTISEMENT FOR SALE
OR LEASE OF RESIDENTIAL REAL PROPERTY.

The General Assembly of North Carolina enacts:

**PART I. ESTABLISH A PROCESS FOR THE EXPEDITED REMOVAL OF
UNAUTHORIZED PERSONS FROM RESIDENTIAL REAL PROPERTY**

SECTION 1.(a) Chapter 42 of the General Statutes is amended by adding a new
Article to read:

"Article 8.

"Expedited Removal of Unauthorized Persons from Residential Property.

"§ 42-79. Definitions.

The following definitions shall apply to this Article:

- (1) Authorized representative. – A real estate broker, or other person who has written legal authority to act on behalf of a property owner.
- (2) Real estate broker. – As defined in G.S. 93A-2(a).
- (3) Resident. – As defined in G.S. 42-59.
- (4) Residential property. – As defined in G.S. 42A-4.
- (5) Tenant. – As defined in G.S. 42-59.
- (6) Unauthorized person. – A person occupying residential property who has no legal claim to the property, is not entitled to occupy it under a valid rental agreement, and is not otherwise authorized to occupy the property. This term does not include a tenant who holds over after the lease term has expired under G.S. 42-26.

"§ 42-80. Grounds for removal of unauthorized persons.

Any unauthorized person who unlawfully occupies residential property may be removed from the property in an expedited proceeding brought by the property owner or the authorized representative of the property owner as provided in this Article if all of the following conditions are met:

- (1) The unauthorized person has unlawfully entered and remains on or continues to reside in the residential property.



- (2) The property owner or the authorized representative of the property owner has directed the unauthorized person to leave the residential property.
- (3) The unauthorized person is not a resident.
- (4) The unauthorized person is not a tenant.
- (5) There is no pending litigation between the property owner and the unauthorized person related to the residential property.
- (6) No valid rental agreement has been entered into or formed by the property owner and the unauthorized person.

"§ 42-81. Expedited removal.

(a) Before commencing an expedited removal proceeding, the property owner or authorized representative of the property owner shall give the unauthorized person at least four hours notice, either orally or in writing, to quit the premises. If reasonable efforts to personally give oral or written notice have failed, written notice may be given by posting the notice on the front door of the property.

(b) An expedited removal proceeding shall commence with the filing of a complaint and issuance of summons in the county where the property is located. If the office of the clerk of superior court is closed, the complaint shall be filed with, and the summons issued by, a magistrate. The complainant shall provide the summons and the complaint to the sheriff. The service of the summons and complaint for expedited removal shall be made by the sheriff on the unauthorized person personally or by posting a copy of the summons and complaint on the front door of the property and shall be made within 24 hours of the sheriff receiving the summons and complaint for service. The sheriff, upon service, shall promptly file a return therefor. A hearing on the expedited removal shall be held before a magistrate in the county where the property is located not sooner than 12 hours after service upon the unauthorized person and no later than 48 hours after such service. To the extent that the provisions of this Article conflict with the Rules of Civil Procedure, Chapter 1A of the General Statutes, with respect to the commencement of an action or service of process, this Article controls.

Notwithstanding any other provision of law, the complainant shall not be required to pay a filing fee or other costs, including costs of service.

(c) The complaint for expedited removal shall allege and the property owner or authorized representative of the property owner shall prove the following at the hearing:

- (1) The complainant is the property owner or the authorized representative of the property owner.
- (2) An unauthorized person has unlawfully entered and is remaining or residing unlawfully on the property.
- (3) The unauthorized person has been directed by the property owner or the authorized representative of the property owner to leave the property, but the unauthorized person remains on the property.
- (4) The unauthorized person is not a current tenant pursuant to any valid lease authorized by the property owner.
- (5) The unauthorized person sought to be removed is not an owner or co-owner of the property and has not been listed on the valid record title to the property.
- (6) There is no litigation related to the property pending between the property owner and any unauthorized person sought to be removed.

The rules of evidence shall not apply in an expedited removal proceeding, and the court shall allow any reasonably reliable and material statements, documents, or other exhibits to be admitted as evidence. The provisions of G.S. 7A-218, 7A-219, and 7A-220, except any provisions regarding amount in controversy, shall apply to an expedited removal proceeding held before the magistrate. These provisions shall not be construed to broaden the scope of an expedited removal proceeding to issues other than the right to possession.

(d) If the court finds for the property owner or authorized representative of the property owner, the court shall immediately enter a written order granting the property owner or authorized representative of the property owner possession and stating the time when the unauthorized person shall vacate the property. In no case shall this time be less than two hours or more than eight hours after service of the order on the unauthorized person. The court's order shall be served on the unauthorized person at the hearing. If the unauthorized person does not appear at the hearing or leaves before the order is served, the complainant shall provide a copy of the order to the sheriff and the order shall be served by delivering the order to the unauthorized person or by posting the order on the front door of the property by the sheriff within 24 hours of the sheriff receiving the order for service. The sheriff, upon service, shall file a return therefor.

If the court finds for the property owner or the authorized representative of the property owner, the court shall determine the amount of the appeal bond that the unauthorized person shall be required to post should the unauthorized person seek to appeal the court order. The amount of the bond shall be a minimum of one thousand dollars (\$1,000), but may be set at a higher amount based on an estimate of the rent that could reasonably be charged for a valid rental of the property during the time the unauthorized person is prosecuting the appeal and reasonable damages that the property owner may suffer, including damage to property and damages arising from the inability of the property owner to reside in or rent the property during the unauthorized person's possession of the property.

"§ 42-82. Appeal.

An unauthorized person, property owner, or authorized representative of the property owner may appeal a court order issued pursuant to G.S. 42-81(d) to district court for a trial de novo. An unauthorized person may petition the district court to stay the removal order and shall post a cash or secured bond with the court in the amount determined by the court pursuant to G.S. 42-81(d).

"§ 42-83. Violation of court order.

If the court has entered an order of removal and an unauthorized person fails to remove personal property from a residential property within the time allowed by the order, the property owner or authorized representative of the property owner may remove the personal property from the premises to or near the property line. The failure of an unauthorized person to vacate a residential property in accordance with a court order issued pursuant to G.S. 42-81(d) shall constitute a criminal trespass under G.S. 14-159.13.

"§ 42-84. Penalties for abuse.

A property owner or authorized representative of a property owner shall undertake to remove a person pursuant to an expedited removal proceeding only when the property owner or authorized representative of the property owner has a good-faith belief that grounds for removal exists under the provisions of this Chapter. Otherwise, the property owner or authorized representative of the property owner shall be guilty of an unfair trade practice under G.S. 75-1.1 and a Class 1 misdemeanor."

SECTION 1.(b) G.S. 7A-292(a) reads as rewritten:

"(a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

- (1) To administer oaths.
- (2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina.
- (3) When authorized by the chief district judge, to take depositions and examinations before trial.
- (4) To issue subpoenas and capiases valid throughout the county.
- (5) To take affidavits for the verification of pleadings.
- (6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41.
- (7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes.

- (8) To take acknowledgments of instruments, as provided in G.S. 47-1.
- (9) To perform the marriage ceremony, as provided in G.S. 51-1.
- (10) To take acknowledgment of a written contract or separation agreement between husband and wife.
- (11) Repealed by Session Laws 1973, c. 503, s. 9.
- (12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.
- (13) Repealed by Session Laws 1973, c. 503, s. 9.
- (14) To accept the filing of complaints and to issue summons pursuant to Article 4 of Chapter 42A of the General Statutes in expedited eviction proceedings when the office of the clerk of superior court is closed.
- (15) When authorized by the chief district judge, as permitted in G.S. 7A-146(11), to provide for appointment of counsel and acceptance of waivers of counsel pursuant to Article 36 of this Chapter.
- (16) To appoint an umpire to determine motor vehicle liability policy diminution in value, as provided in G.S. 20-279.21(d1).
- (17) To accept the filing of complaints and to issue summons pursuant to Article 8 of Chapter 42 of the General Statutes in expedited removal proceedings when the office of the clerk of superior court is closed."

SECTION 1.(c) The Administrative Office of the Courts, in consultation with the North Carolina Sheriffs' Association shall develop a complaint form for use in the expedited removal proceeding enacted in subsection (a) of this section and shall make that form available no later than September 30, 2024.

SECTION 1.(d) Subsections (a) and (b) of this section become effective October 1, 2024, and the criminal penalties contained in G.S. 42-83 and G.S. 42-84 as enacted by subsection (a) of this section apply to offenses committed on or after that date. The remainder of this section is effective when it becomes law.

SECTION 2.(a) There is appropriated from the General Fund to the Administrative Office of the Courts the sum of ten thousand dollars (\$10,000) for the 2024-2025 fiscal year for the purpose of developing the affidavit form required by G.S. 42-80(c) as enacted in Section 1 of this act.

SECTION 2.(b) This section becomes effective July 1, 2024.

PART II. INCREASE PUNISHMENT FOR WILLFUL AND WANTON DAMAGE TO THE RESIDENTIAL REAL PROPERTY OF ANOTHER

SECTION 3.(a) G.S. 14-127 reads as rewritten:

"§ 14-127. Willful and wanton injury to real property.

If any person shall willfully and wantonly damage, ~~injure-injure,~~ or destroy any real property whatsoever, either of a public or private nature, ~~he shall be the person is~~ guilty of a Class 1 misdemeanor. Unless the conduct is covered under some other provision of law providing greater punishment, if any person shall willfully and wantonly damage, injure, or destroy the residential real property of another, and that damage, injury, or destruction results in damages valued at one thousand dollars (\$1,000) or more, the person is guilty of a Class H felony."

SECTION 3.(b) This section becomes effective December 1, 2024, and applies to offenses committed on or after that date.

PART III. PROHIBIT FRAUDULENT RENTAL, LEASE, OR ADVERTISEMENT FOR SALE OR LEASE OF RESIDENTIAL REAL PROPERTY

SECTION 4.(a) Article 20 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-117.8. Fraudulent advertisements and transactions involving residential real property.

(a) Offense Involving Fraudulent Rental or Lease. – It is unlawful to rent or lease residential real property to another person knowing that the renter or lessor has no lawful ownership in the property or leasehold interest in the property.

(b) Offense Involving Fraudulent Advertising. – It is unlawful to list or advertise residential real property for rent, lease, or sale knowing that the purported renter, lessor, or seller has no legal title or authority to rent, lease, or sell the property.

(c) Punishment. – Unless the conduct is covered under some other provision of law providing greater punishment, a person who violates this section shall be punished as follows:

(1) A person who violates subsection (a) of this section is guilty of a Class H felony.

(2) A person who violates subsection (b) of this section is guilty of a Class I felony."

SECTION 4.(b) This section becomes effective December 1, 2024, and applies to offenses committed on or after that date.

PART IV. EFFECTIVE DATE

SECTION 5. Except as otherwise provided, this act is effective when it becomes law.