

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 1070
Committee Substitute Favorable 6/26/24

Short Title: Property Rights and Protections.

(Public)

Sponsors:

Referred to:

May 9, 2024

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY VARIOUS PROVISIONS REGARDING SUMMARY EJECTMENTS
3 AND OTHER SMALL CLAIMS MATTERS, TO MODIFY PROVISIONS REGARDING
4 PROPERTY CRIMES, AND TO APPROPRIATE FUNDS TO THE ADMINISTRATIVE
5 OFFICE OF THE COURTS.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. ESTABLISH THE SMALL CLAIMS APPEAL PERIOD BEGINNING WHEN**
9 **A JUDGMENT IS RENDERED**

10 **SECTION 1.(a)** G.S. 7A-224 reads as rewritten:

11 **"§ 7A-224. Rendition and entry of judgment.**

12 Judgment in a small claim action is rendered in writing and signed by the ~~magistrate-~~
13 ~~magistrate or is rendered electronically by the magistrate.~~ The judgment so rendered is a
14 judgment of the district court, and is recorded and indexed as are judgments of the district and
15 superior court generally. Entry is made as soon as practicable after rendition."

16 **SECTION 1.(b)** G.S. 7A-228 reads as rewritten:

17 **"§ 7A-228. New trial before magistrate; appeal for trial de novo; how appeal perfected;**
18 **oral notice; dismissal.**

19 (a) The chief district court judge may authorize magistrates to hear motions to set aside
20 an order or judgment pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a
21 magistrate. The exercise of the authority of the chief district court judge in allowing magistrates
22 to hear Rule 60(b)(1) motions shall not be construed to limit the authority of the district court to
23 hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief from
24 a judgment or order entered by a magistrate and, if granted, to order a new trial before a
25 magistrate. After final disposition before the magistrate, the sole remedy for an aggrieved party
26 is appeal for trial de novo before a district court judge or a jury. Notice of appeal may be given
27 orally in open court upon announcement or after ~~entry of judgment. a judgment is rendered.~~ If
28 not announced in open court, written notice of appeal must be filed in the office of the clerk of
29 superior court within 10 days after ~~entry of judgment. a judgment is rendered.~~ The appeal must
30 be perfected in the manner set out in subsection (b). Upon announcement of the appeal in open
31 court or upon receipt of the written notice of appeal, the appeal shall be noted upon the judgment.
32 If the judgment was mailed to the parties, then the time computations for appeal of such judgment
33 shall be pursuant to G.S. 1A-1, Rule 6.

34 (b) The appeal shall be perfected by (1) oral announcement of appeal in open court; or
35 (2) by filing notice of appeal in the office of the clerk of superior court within 10 days after ~~entry~~
36 ~~of a judgment is rendered~~ pursuant to subsection (a), and by serving a copy of the notice of appeal



1 on all parties pursuant to G.S. 1A-1, Rule 5. Failure to pay the costs of court to appeal within 10
2 days after ~~entry of a judgment is rendered~~ in a summary ejectment action, and within 20 days
3 after ~~entry of a judgment is rendered~~ in all other actions, shall result in the automatic dismissal
4 of the appeal. Notwithstanding the foregoing deadlines, if an appealing party petitions to qualify
5 as an indigent for the appeal and is denied, that party shall have an additional five days to perfect
6 the appeal by paying the court costs. The failure to demand a trial by jury in district court by the
7 appealing party before the time to perfect the appeal has expired is a waiver of the right thereto.

8 (b1) A person desiring to appeal as an indigent shall, within 10 days of ~~entry of judgment~~
9 ~~by the magistrate, a magistrate rendering a judgment,~~ file an affidavit that ~~he or she~~ the person is
10 unable by reason of poverty to pay the costs of appeal. Within 20 days after ~~entry of judgment, a~~
11 ~~judgment is rendered,~~ a superior or district court judge, magistrate, or the clerk of the superior
12 court may authorize a person to appeal to district court as an indigent if the person is unable to
13 pay the costs of appeal. The clerk of superior court shall authorize a person to appeal as an
14 indigent if the person files the required affidavit and meets one or more of the criteria listed in
15 G.S. 1-110. A superior or district court judge, a magistrate, or the clerk of the superior court may
16 authorize a person who does not meet any of the criteria listed in G.S. 1-110 to appeal as an
17 indigent if the person cannot pay the costs of appeal.

18 The district court may dismiss an appeal and require the person filing the appeal to pay the
19 court costs advanced if the allegations contained in the affidavit are determined to be untrue or
20 if the court is satisfied that the action is frivolous or malicious. If the court dismisses the appeal,
21 the court shall affirm the judgment of the magistrate.

22"

23
24 **PART II. REQUIRE WRITTEN FINDINGS OF INDIGENCY IN SMALL CLAIMS**
25 **APPEALS, MODIFY CRITERIA FOR PLAINTIFF'S MOTION TO DISMISS**
26 **SUMMARY EJECTMENT APPEAL, AND REQUIRE THE CLERK TO DISBURSE**
27 **PAYMENTS WITHIN FIVE DAYS OF A REQUEST**

28 **SECTION 2.(a)** G.S. 7A-228 reads as rewritten:

29 **"§ 7A-228. New trial before magistrate; appeal for trial de novo; how appeal perfected;**
30 **oral notice; dismissal.**

31 ...

32 (b1) A person desiring to appeal as an indigent shall, within 10 days of entry of judgment
33 by the magistrate, file an affidavit that he or she is unable by reason of poverty to pay the costs
34 of appeal. Within 20 days after entry of judgment, a superior or district court judge, magistrate,
35 or the clerk of the superior court may authorize a person to appeal to district court as an indigent
36 if the person is unable to pay the costs of appeal. The clerk of superior court shall authorize a
37 person to appeal as an indigent if the person files the required affidavit and meets one or more of
38 the criteria listed in G.S. 1-110. A superior or district court judge, a magistrate, or the clerk of
39 the superior court may authorize a person who does not meet any of the criteria listed in
40 G.S. 1-110 to appeal as an indigent if the person cannot pay the costs of appeal.

41 The district court may dismiss an appeal and require the person filing the appeal to pay the
42 court costs advanced if the allegations contained in the affidavit are determined to be untrue or
43 if the court is satisfied that the action is frivolous or malicious. If the court dismisses the appeal,
44 the court shall affirm the judgment of the magistrate.

45 (b2) A superior or district court judge, magistrate, or clerk of superior court authorizing a
46 person to appeal to district court as an indigent pursuant to subsection (b1) of this section shall
47 do at least one of the following:

- 48 (1) Make written findings, including (i) all criteria listed in G.S. 1-110 that led to
49 the authorization of the person to appeal to district court as an indigent and
50 (ii) all information or evidence used to determine that one or more criteria in
51 G.S. 1-110 existed.

(2) Make written findings indicating (i) that the authorization of the person to appeal to district court as an indigent was not based upon criteria listed in G.S. 1-110 and (ii) all information or evidence used to determine that the person would otherwise be authorized to appeal to district court as an indigent.

(d) When a defendant in a summary ejection action has given notice of appeal and perfected the appeal in accordance with G.S. 7A-228(b), the plaintiff may serve upon the defendant a motion to dismiss the appeal if the ~~defendant~~ defendant failed to raise a defense orally or in writing in the small claims court and failed to do at least one of the following:

- (1) ~~Failed to raise a defense orally or in writing in the small claims court;~~
- (2) ~~Failed to file~~ File a motion, answer, or counterclaim in the district court; ~~and court.~~
- (3) ~~Failed to comply~~ Comply with any obligation set forth in the Bond to Stay Execution on Appeal of Summary Ejection Judgment entered by the court.

The motion to dismiss the appeal shall state that the defendant failed to raise a defense orally or in writing in the small claims court and list all any of the deficiencies committed by the defendant, as described in subdivisions ~~(1), (2), (2)~~ and (3) of this subsection, and shall state that the court will decide the motion to dismiss without a hearing if the defendant fails to respond within 10 days of receipt of the motion. The defendant may defeat the motion to dismiss by responding within 10 days of receipt of the motion by doing ~~any~~ at least one of the following acts: (i) if the motion is filed alleging a deficiency described in subdivision (2) of this subsection, by filing a responsive motion, answer, or counterclaim and serving the plaintiff with a copy thereof or (ii) if the motion is filed alleging a deficiency described in subdivision (3) of this subsection, by paying the amount due under the bond to stay execution, if any amount is owed by the defendant. If the defendant is not required by law to make any payment under the bond to stay execution, the court shall not use the failure to make a payment as a basis to dismiss the appeal. The court shall review the file, determine whether the motion satisfies the requirements of this subsection, determine whether the defendant has made a sufficient response to defeat the motion, and shall enter an order resolving the matter without a hearing.

...."
SECTION 2.(b) G.S. 42-31 reads as rewritten:
"§ 42-31. Trial by magistrate.

If the defendant by his answer denies any material allegation in the oath of the plaintiff, the magistrate shall hear the evidence and give judgment as he shall find the facts to be. If the magistrate finds in favor of the plaintiff, the magistrate's judgment shall include an order to the clerk of superior court providing that if the judgment is appealed by the defendant, the clerk of superior court is compelled to pay to the plaintiff any amount specified in subsection (e) or (g) of G.S. 42-34 within five business days of a written request by the plaintiff."

SECTION 2.(c) G.S. 42-34 reads as rewritten:
"§ 42-34. Undertaking on appeal and order staying execution.

(e) Upon application of the plaintiff, the clerk of superior court ~~shall~~ shall, within five business days of a written request, pay to the plaintiff any amount of the rental payments paid by the defendant into the clerk's office which are not claimed by the defendant in any pleadings.

(g) When it appears by stipulation executed by all of the parties or by final order of the court that the appeal has been resolved, the clerk of court ~~shall~~ shall, within five business days of a written request, disburse any accrued moneys of the undertaking remaining in the clerk's office according to the terms of the stipulation or order."

1 **PART III. INCREASE PUNISHMENT FOR WILLFUL AND WANTON DAMAGE TO**
2 **THE RESIDENTIAL REAL PROPERTY OF ANOTHER**

3 **SECTION 3.** G.S. 14-127 reads as rewritten:

4 **"§ 14-127. Willful and wanton injury to real property.**

5 If any person shall willfully and wantonly damage, injure or destroy any real property
6 whatsoever, either of a public or private nature, ~~he shall be~~ the person is guilty of a Class 1
7 misdemeanor. Unless the conduct is covered under some other provision of law providing greater
8 punishment, if any person shall willfully and wantonly damage, injure, or destroy the residential
9 real property of another, and that damage, injury, or destruction results in damages valued at five
10 hundred dollars (\$500.00) or more, the person is guilty of a Class I felony."

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12 **PART IV. PROHIBIT FRAUDULENT RENTAL, LEASE, OR ADVERTISEMENT FOR**
13 **SALE OF RESIDENTIAL REAL PROPERTY**

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

16 **"§ 14-117.8. Fraudulently renting, leasing, or advertising for sale of residential real**
17 **property.**

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

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

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

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

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

30 (d) In addition to any criminal penalties provided in this section, knowingly renting or
31 leasing residential real property to another person knowing that the renter or lessor has no lawful
32 ownership or leasehold interest in the property shall constitute a violation of G.S. 75-1.1."

33
34 **PART V. APPROPRIATION TO THE ADMINISTRATIVE OFFICE OF THE COURTS**

35 **SECTION 5.** There is appropriated from the General Fund to the Administrative
36 Office of the Courts the sum of ten thousand dollars (\$10,000) in nonrecurring funds for the
37 2024-2025 fiscal year for the purpose of policy implementation, education, and training on the
38 procedures required in this act.

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40 **PART VI. EFFECTIVE DATE**

41 **SECTION 6.** Part 1 of this act becomes effective October 1, 2025, and applies to
42 judgments rendered on or after that date. Part 2 of this act becomes effective October 1, 2024,
43 and applies to judgments rendered on or after that date. Parts 3 and 4 of this act become effective
44 December 1, 2024, and apply to offenses committed on or after that date. Part 5 of this act
45 becomes effective July 1, 2024. The remainder of this act is effective when it becomes law.