

Tenants, Trespassers, and Travelers: Which Remedy is Just Right?

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[On the Civil Side](#)

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Summary Ejectment

- Action brought by landlord to recover possession of rental property from a tenant
- “Simple landlord-tenant relationship” required
- No LL-T relationship=no subject matter jurisdiction

Subject Matter Jurisdiction

Small Claims Action Defined (G.S. 7A-210)

- Amount in controversy \$10,000 or less
- Remedy is money, return of personal property, or **summary ejectment**
- Plaintiff requested assignment

Summary Ejectment

- Restricted to cases of where there is a landlord-tenant relationship
- No landlord-tenant relationship=no authority to hear
- 4 Grounds for Summary Ejectment
 1. Holding over after the expiration of the lease term (G.S. 42-26(a)(1))
 2. Breach of a lease condition for which the right of re-entry is specified (G.S. 42-26(a)(2))
 3. Implied statutory forfeiture for the failure to pay rent (G.S. 42-3)
 4. Expedited eviction of drug traffickers and other criminals (G.S. 42-63)

Subject Matter Jurisdiction

- Without it, judgment is invalid.
- Can be challenged at any point, even on appeal
- Dismiss summary ejectment proceeding if no LL-T relationship

Simple Landlord-Tenant Relationship

- Landlord has right of possession.
- Landlord transfers right to tenant.
- There is an exchange of value.
- There is a contract specifying duration and value.

Civil Trespass

Elements of Trespass to Land

- Intent
- Unauthorized Entry
- Ownership or Possessory Interest
- Damages

Expedited Removal of Unauthorized Persons-Effective December 1, 2025

Expedited Removal of Unauthorized Person from Residential Property, G.S. Ch. 14, Art. 22D

- Creates an expedited civil alternative to criminal charges
- Initiated by property owner or an authorized representative
- Complaint filed with the clerk (or magistrate if clerk's office is closed)
- Law enforcement and magistrates are immune from liability for wrongful removal if acts in good faith
- Creates a remedy against the owner/authorized representative for wrongful removal

Key Definitions in G.S. 14-159.50

- Authorized representative—A real estate broker or other person who has written legal authority to act on behalf of a property owner.
- Contract for deed—An agreement, whether denominated a "contract for deed," "installment land contract," "land contract," "bond for title," or any other title or description in which the seller agrees to sell an interest in property to the purchaser and the purchaser agrees to pay the purchase price in five or more payments exclusive of the down payment, if any, and the seller retains title to the property as security for the purchaser's obligation under the agreement. G.S. 47H-1.
- Law enforcement agency—A county sheriff's office, a county police department, or a municipal police department.
- Real estate broker—Any person, partnership, corporation, limited liability company, association, or other business entity who for a compensation or valuable consideration or promise thereof lists or offers to list, sells or offers to sell, buys or offers to buy, auctions or offers to auction (specifically not including a mere crier of sales), or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or who sells or offers to sell leases of whatever character, or rents or offers to rent any real estate or the improvement thereon, for others. G.S. 93A-2.
- Residential property—An apartment, condominium, single-family home, townhouse, cottage, or other property that is devoted to residential use or occupancy by one or more persons for a definite or indefinite period. G.S. 42A-4.
- Tenant—Any natural person or entity who is a named party or signatory to a lease or rental agreement, and who occupies, resides in, or has a legal right to possess and use an individual rental unit. G.S. 42-59.
- Unauthorized person—A person or persons occupying residential property who has no legal claim to the property, is not entitled to occupy it under a valid rental agreement or contract for deed, has not paid any rent or other form of payment to the property owner or an authorized representative of the property owner in connection with the occupancy of the property, 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.

Required Allegations, G.S. 14-159.51

1. The requesting party is the property owner or the authorized representative of the property owner.
2. The property that is being unlawfully occupied is residential property or property used in connection with or appurtenant to residential property.

3. An unauthorized person has entered the property after the property owner acquired the property and is remaining or residing unlawfully on the residential property of the property owner.
4. The property was not offered or intended as an accommodation for the general public at the time the unauthorized person entered.
5. The property owner or the authorized representative of the property owner has directed the unauthorized person to leave the residential property.
6. The unauthorized person is not a tenant of the owner of the property being unlawfully occupied.
7. The unauthorized person is not an owner of the property being unlawfully occupied.
8. There is no pending litigation between the property owner and the unauthorized person related to the residential property.
9. No other valid rental agreement or contract for deed has been entered into or formed by the property owner or a former property owner and the unauthorized person permitting the unauthorized person to occupy the residential property.
10. No rent or other form of payment has ever been demanded of or paid by the unauthorized person to the property owner or to an authorized representative of the property owner in connection with the occupancy of the residential property.

Removal of Unauthorized Persons, G.S. 14-159.52

- Service by sheriff personally or by posting within 24 hours
- Hearing held before magistrate as soon as practicable, but no more than 48 hours after service
- If court finds for property owner, immediately enter written order for possession and time to vacate
- Time to vacate no more than 4 hours after service of order
- Service occurs in court or by sheriff within 24 hours of receipt

Violation of Court Order, G.S. 14-159.54

- Removal of personal property by owner or authorized representative to property line
- Failure to vacate constitutes a criminal trespass under G.S. 14-159.13(a)(1) (second degree trespass)

How is an Unauthorized Person Removed?

Commencement of the Process. The process begins with the filing of a complaint for the expedited removal of the unauthorized person in the clerk's office or in the magistrate's office if the clerk's office is closed. The clerk or the magistrate issues a summons commencing the action. The party seeking the removal takes the summons and complaint to the sheriff's office for service. Service may be personally upon the unauthorized person or by posting a copy of the summons and complaint on the front door of the property. The sheriff is required to serve the summons and complaint within twenty-four (24) hours of receipt.

If the unauthorized person is unknown to the property owner, the law allows the complaint and summons to be addressed to "John (and/or Jane) Doe and all Occupants." G.S. 42-62(b) and G.S. 1A-1, Rule 4(k)(2) contain similar provisions, however they require the plaintiff to include a description of the defendant that is sufficient to identify him or her. Absent such a description, it

is unclear how the sheriff will be able to serve a defendant with the summons and complaint or subsequent orders of the court.

The exercise of jurisdiction by the court over property located in North Carolina is referred to as in rem jurisdiction. G.S. 1-75.8 provides that a judgment in rem may affect the defendant's interests in a status or property only if the process has been served pursuant to Rule 4(k) of the Rules of Civil Procedure. Service pursuant to Rule 4(k)(2) on unknown defendants would be by publication. This new procedure creates a mechanism for property owners to exclude defendants from real property and fits within the type of actions covered by G.S. 1-75.8.

The new G.S. 14-159.52(a) allows for service on unknown defendants either personally or by posting on the front door of the property. Further it provides that conflicts between the Act and the Rules of Civil Procedure are resolved in favor of the Act. However, the conflict is not with Chapter 1A, but with Chapter 1 of the General Statutes. For the court to exercise in rem jurisdiction over the property, service by publication is required which conflicts with the new law's allowance of service by posting. These jurisdictional issues raise questions that are beyond the scope of this blog post.

The Hearing. A hearing is scheduled before a magistrate as soon as practicable but no more than forty-eight (48) hours after service by the sheriff occurs. The proper venue for the hearing is the county where the residential property is located. The law requires the magistrate to enter an order for possession if the court finds for the property owner. Thus, the property owner or their authorized representative must provide prima facie, or sufficient, evidence to establish the allegations in the complaint for the court to make this finding. The burden of proof in a civil action is by a preponderance of the evidence, sometimes referred to as the greater weight of the evidence, meaning it is more probably true than not.

Service of the Order. If the magistrate finds in favor of the property owner, then the magistrate must enter a written order granting the property owner or authorized representative possession and stating the time when the unauthorized person shall vacate the property. The unauthorized person will have no more than four (4) hours after service of the order to vacate the property. If the unauthorized person is present in court, then the order is considered served when it is announced and signed by the magistrate. If the unauthorized person is not served in court, then the property owner or their authorized representative must provide a copy of the order to the sheriff. The sheriff must serve the order either by delivering the order to the unauthorized person or by posting the order on the front door of the property. Service of the order must take place within twenty-four (24) hours of the sheriff receiving it for service.

Appeal. Either party may appeal the magistrate's order to the district court for a new trial. 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 ten thousand dollars (\$10,000), 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.

It is unclear if the purpose of the bond is to allow the unauthorized person to remain in the property or is a condition required to have the appeal heard. Violation of the court's order constitutes a criminal trespass, seemingly making it unnecessary for the order to be enforced by a writ of execution. If no writ is required, staying the execution of the court's order does not appear to be the purpose of the bond. However, the statute requires the court to consider "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" which suggests that the bond allows the unauthorized person to stay in the property pending the appeal. It is also unclear whether the appeal bond applies to the appeal to district court or to the appeal of the district court's order to the court of appeals.

The Act is silent about the time to appeal the magistrate's judgment. In a summary ejectment action, a defendant has ten (10) days to appeal the magistrate's judgment for a trial de novo in district court. G.S. 7A-228. The law does not address expedited proceedings for the hearing in district court such as those found in G.S. 42-68 for the expedited eviction of drug traffickers or other criminals. Presumably, the clerk will follow the same procedure for calendaring an appeal to district court used for small claims actions.

Criminal Trespass

Second Degree Trespass, G.S. 14-159.13(a)(1)

On premises of another after the person has been notified not to enter or remain there by the owner, by a person in charge of the premises, by a lawful occupant, or by another authorized person

Second Degree Trespass Elements

- Without authorization
- Enters or remains
- On premises of another
- After having been notified not to enter or remain

Other Crimes to Consider

G.S. 14-159 possessing/occupying house, uninhabited house or other building without consent

G.S. 14-159.12(a)(2) First Degree Trespass in building of another

G.S. 14-159.12(f) Felony First Degree Trespass

- Returns after removal by writ or order
- False evidence of ownership/possessory interest

G.S. 14-54 Breaking or entering buildings

G.S. 14-100 Obtaining property by false pretenses

G.S. 14-127 Willful and wanton injury to real property

G.S. 14-160 Willful and wanton injury to personal property

Transient Occupants

Transient Occupancy, G.S. 72-1(c)

the rental of an accommodation by an inn, hotel, motel, recreational vehicle park, campground, or similar lodging to the same guest or occupant for fewer than 90 consecutive days

Removal of a Transient Occupant, G.S. 72-1(b)

- At expiration of contract may be restrained from entering
- Property may be removed by innkeeper

Points to Remember about Transient Occupancy

- Summary ejectment does not apply unless expressly provided in the agreement
- Statute is silent about occupant's status on day 90 and after

What if it's unclear if occupant is transient or tenant?

Consider Factors in *Baker v. Rushing*

- Is there a lease?
- Is the property the sole and permanent residence of the occupant?
- What is the length of the party's residence at the property?
- What is the layout of the property?
- Does the property have a hotel license and operate as such?
- Does the owner maintain control over the premises?
- Does the owner retain the room key?
- Does the owner provide maid service?
- Does the owner share facilities with the occupant?
- Does the owner repair and maintain the rooms?
- Does the owner or the occupant pay the utilities?

Summary

- Summary ejectment is only available where the parties have a simple landlord-tenant relationship.
- S.L. 2025-88 creates an expedited procedure for the removal of unauthorized occupants. This civil procedure, **effective December 1**, is an alternative to criminal charges.
- The unauthorized occupancy could also result in criminal charges.
- Unauthorized occupancy is not the same as transient occupancy.