

Legislation/Civil Law/2012

Landlord-Tenant Law

1. **S.L. 2012-17 (H 493): Changes in landlord-tenant law.** Clarifies that the existing procedure for staying enforcement of a judgment awarding possession of rental property applies during the thirty-day “appeal period” following a judgment for the landlord in district court. The result is that, despite Rule 62’s provisions to the contrary in other cases, a district court judgment awarding possession to the landlord in a summary ejectment action will be immediately enforceable if the tenant fails to stay enforcement by following the procedure set out in G.S. 42-34 and -34.1.

Adds new section G.S. 28A-25-1.2 establishing a detailed procedure for disposition of a deceased tenant’s property. The new law provides that in the situation in which (1) no legal representative of the tenant’s estate has been appointed, (2) no affidavit related to the decedent’s estate has been filed as specified, and (3) at least ten days have passed since the end of the paid rental period, the landlord may file an affidavit to that effect in the office of the clerk of superior court. In this affidavit the landlord must include a good faith estimate of the property’s value as well as an inventory of the property. The law requires the landlord to take certain steps to make others aware of this affidavit, including indexing it in the index of estates. Upon filing the affidavit and paying a \$30 fee, the landlord is authorized to remove and store the property and relet the premises. Ninety days after filing this affidavit, assuming the circumstances remain essentially unchanged, the landlord is authorized to dispose of the property, either by selling it or donating it, in accordance with the detailed procedure set out in the statute. If the landlord wishes, the landlord may elect instead to file an action for summary ejectment and proceed with disposal of the tenant’s property in accordance with the legal requirements applicable to that procedure. A lessor who assumes possession of a deceased tenant’s property in a manner not authorized by law is liable to the tenant’s estate for damages and return, or reimbursement for the value of, the property. The new procedure applies to the property of tenants who die on or after October 1, 2012.

G.S. 42-25.9(d) authorizes a lessor to donate tenant’s property left behind to a nonprofit organization under certain circumstances. S.L. 2012-17 increases the maximum value of property subject to this method of disposal from \$500 to \$750.

G.S. 42-25.9(h) authorizes a lessor to dispose of property of little value if the tenant fails to recover the property within five days after the writ of possession is enforced. The new law extends this provision to the situation in which the total value of property left behind is less than \$500 (previously, less than \$100).

An issue of great concern to both landlords and tenants concerns the effect of partial payment on a landlord’s right to summary ejectment. Waiver is an equitable doctrine, and judicial officials often struggle in discerning whether it applies in particular fact situations. S.L. 2012-17 brings relief through an amendment to G.S. 42-26; the new law states that a landlord does not waive the right to pursue ejectment by accepting partial payment if two conditions are present: first, this “non-waiver” provision must be contained in the lease agreement and, second, the ground for

eviction must be breach of a lease condition which triggers a forfeiture clause. The amendment specifically states that it applies to partial housing subsidy payments as well as traditional rent payments.

G.S. 42-51 sets out the list of expenses that a landlord is authorized to deduct from a security deposit. The 2012 General Assembly made several changes in this list. Effective October 1, 2012, a tenant's security deposit may be used for unpaid late fees or administrative fees under G.S. 42-26, as well as reimbursement for damages caused by the tenant to smoke or carbon monoxide detectors. Also new is authorization for fees paid to a real estate broker in order to re-rent the premises following the tenant's breach. The new law continues to allow use of the security deposit to pay court costs, and removes the limiting language of the statute specifying that these costs must have been incurred in connection with terminating a tenancy. Finally, the amendment clarifies that a security deposit may not be used to pay damages for premature termination of the rental period when the termination is specifically authorized by law (i.e., in certain cases involving termination by crime victims and members of the military, and when the tenant vacates because of the landlord's violation of the Residential Rental Agreements Act.)

G.S. Chapter 42A, the Vacation Rental Agreements Act, was amended by S.L. 2012-17 to authorize landlords to include a reasonable cleaning fee in their lease agreements.

2. **S.L. 2012-64 (H 971): Termination of lease when military service member dies while on active duty.** Amends G.S. 42-45 to provide that an immediate family member or estate representative of a deceased service member may terminate the service member's lease by giving designated notice. Termination of the lease will be effective as well for family members who are cotenants. The law applies only when the service member was on active duty at the time of death, and the service member's estate may be responsible for liquidated damages as set out in the statute. The act was effective June 26, 2012.
3. **S.L. 2012-92 (S 77): Tamper-resistant 10-year lithium battery smoke alarm in rental property.** This new law, effective December 31, 2012, requires landlords replacing or installing a smoke alarm in residential rental property to use a tamper-resistant alarm with a ten-year lithium battery. Failure to do so is a violation of the Residential Rental Agreement Act as well as an infraction pursuant to G.S. 42-44(a1). The requirement does not apply to property equipped with a hardwired alarm with a battery back-up, nor to property equipped with a combination smoke alarm/carbon monoxide alarm.
4. **S.L. 2012-76 (S 518): Landlord to notify State Bar of lawyer's default.** This act adds a new GS 42-14.4 and amends GS 44A-2 to require a landlord who knows that a tenant is a lawyer to notify the State Bar at least 15 days before destroying or discarding any potentially confidential materials left behind when the tenant vacates

the premises or is ejected. The State Bar may take possession of the materials within that 15-day period without a court order. The new provisions also apply to storage spaces. Effective October 1, 2012.

5. S.L. 2012-17 (H 493): Removal by landlord of deceased tenant's personal property.

Creates a new section G.S. 28A-25-1.2 to provide a landlord a new method of disposing of a deceased tenant's personal property under certain circumstances. When a person who is the sole occupant of a dwelling unit dies leaving tangible personal property in the unit, the landlord may take possession of the property upon filing an affidavit if all of the following conditions have been met: At least 10 days have passed from the date the paid rental period has expired; no personal representative, collector, or receiver has been appointed for the decedent's estate in the county of the dwelling unit; and no proceeding for "collection by affidavit" has been filed in the county of the dwelling unit.

The affidavit must be on an AOC form and must include all of the information specifically set forth in the statute. The landlord must file the affidavit in the county of the dwelling unit, and the clerk must file the affidavit as an estate file. There is a \$30.00 fee for filing the affidavit. The landlord must mail a copy of the affidavit to the tenant's emergency contact on file. Upon proper filing of the affidavit, the property is transferred to the landlord, and the landlord may remove the property and store it within the same county. The landlord is then in possession of the unit and may let the unit.

If, after 90 days, no personal representative, collector, or receiver has been appointed for the decedent's estate and no proceeding for "collection by affidavit" has been filed in that county, the landlord may sell the property per the procedures set forth in the statute or may deliver it to certain non-profit organizations. Proceeds from a sale of the property may be applied to unpaid rent, damages, packing and storage fees, filing fees, and sale costs. Surplus is paid to the clerk to be administered as set forth in the statute.

If the property is under \$500 in value, the landlord may, without filing the affidavit described above, deliver the property to certain non-profit organizations. There is no requirement that the landlord notify or account to the clerk when exercising this option. Effective October 1, 2012, and applies to personal property owned by a tenant who dies on or after that date.

Year's Allowance

S.L. 2012-71 (H 1069): Increase in child's allowance. Amends G.S. 30-17 to increase to \$5,000 (was \$2,000) the amount to be assigned as a year's allowance to a surviving child upon death of a parent. Effective January 1, 2013.

Also amends G.S. 30-17 to clarify that a payment of a child's allowance to the child's surviving parent shall be made regardless of whether the decedent's surviving spouse petitioned for an elective share under G.S. Chapter 30. Also provides that, in addition to a guardian, a child's "next friend" may apply for the child's year's allowance under G.S.

30-20; may receive the clerk's property list under G.S. 30-21; may appeal an assignment under G.S. 30-23; and may apply to superior court for a different allowance as provided in G.S. 30-27. Effective June 26, 2012.

Undisciplined and Delinquent Juveniles

1. **[S.L. 2012-172](#) (H 853): Limit secure custody for undisciplined juvenile.** The act rewrites G.S. 7B-1903(b)(7) and (8), which describe when a juvenile who is alleged to be undisciplined may be held in secure custody, to limit the time the juvenile may spend in secure custody in all instances to 24 hours, excluding Saturdays, Sundays, and state holidays. Previously, that period could be extended to 72 hours "where circumstances require[d]." The change is effective October 1, 2012.
2. **[S.L. 2012-172](#) (H 853): No contempt for undisciplined juvenile.** The act rewrites G.S. 7B-2505, which describes procedures and consequences for finding a juvenile in contempt for violating the terms of protective supervision. Effective October 1, 2012, the section no longer refers to contempt and no longer authorizes the court to order any period of detention as a consequence of a juvenile's violating the terms of protective supervision. Instead, after notice and a hearing and a finding that the juvenile violated those terms, the court may (i) continue or modify the terms of protective supervision, (ii) order any disposition authorized for undisciplined juveniles under G.S. 7B-2503, or (iii) extend the period of protective supervision for up to three months.

No-Contact/Protective Orders

1. **[S.L. 2012-19](#) (H 660): Civil No-Contact Orders.** Amends G.S. 50C-9 to provide that, if a defendant is not present in court when a civil no-contact order is entered, the order may be served upon the defendant through any method authorized by Rule 4 of the Rules of Civil Procedure. Until this amendment, the statute required that the order be served only by the sheriff. The act was effective June 7, 2012.
2. **[S.L. 2012-20](#), sec. 1. (H 589): Domestic Violence Civil Protective Orders.** Amends G.S. 50B-2(c) to provide that a continuance of a hearing following the issuance of an ex parte domestic violence protective order shall be limited to one extension of no more than 10 days unless all parties consent or good cause is shown. In addition, the amendment provides that the hearing on the return of the

ex parte order shall have priority on the court calendar. The amendment also makes organizational changes to the statute. The act applies to actions or motions filed on or after October 1, 2012.