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# OUTLINE ON RIGHTS REGARDING TENANT'S PROPERTY

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## RESIDENTIAL LEASES: PROPERTY OTHER THAN MOBILE HOME AND CONTENTS.

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A landlord has no authority to do anything with a tenant's property until the landlord has brought a summary ejectment action, won a judgment for possession, and had the sheriff execute a writ of possession to enforce the judgment.

- The need for the landlord to deal with property remaining will arise only if the landlord selects the padlocking method of execution.
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After the sheriff padlocks the premises under a writ of possession, the landlord has three alternatives for dealing with the tenant's property remaining on the premises. The landlord must hold property for ten days and then may throw away, dispose of, or sell any items of personal property remaining on the premises.

- During the ten-day period the landlord may remove the property and store it or may leave the property on the premises.
- If the tenant requests the property during that ten-day period, the landlord must release the property to the tenant during regular business hours at an agreed upon time.

*If the landlord decides to sell the property*, the landlord must give written notice to the tenant by first-class mail to the tenant's last known address at least seven days before the date of the sale.

- The notice must indicate when and where the sale will occur and how surplus can be claimed by tenant and what happens to it if not claimed.
- The tenant is entitled to return of the property, upon request, any time before the day of the sale, which means that in this circumstance, the tenant is entitled to recover the property more than ten days after the sheriff has served the writ of possession.
- The statute does not set out any procedure for how the landlord must sell the property or what kind, if any, advertising is required. (It is unclear whether the court would impose some reasonableness standard on the manner of sale.)

- The landlord may apply the proceeds of sale to unpaid rent, other damages, storage fees, and sale costs.
- Any surplus must be disbursed to the tenant, upon request, within ten days of the sale.
- If not requested by the tenant within ten days of the sale, the landlord must give the surplus proceeds to the county government of the county in which the real property is located.

If the total value all of the personal property left on the premises *is less than \$100*, the property is considered abandoned five days after execution of a writ of possession. At that time the landlord may throw away or dispose of the property.

- If the tenant requests the property before the expiration of the five-day period, the landlord must release possession to the tenant during regular business hours or at a time agreed upon.

If a tenant abandons personal property with a total *value of \$500 or less* or fails to remove such property at the time of execution of a writ of possession, the landlord may immediately remove the property and deliver it to a nonprofit organization that regularly provides free or at a nominal cost clothing and household furnishings to people in need.

- The nonprofit organization must agree to identify and separately store the tenant's property for thirty days.
- It must release the property to the tenant at no charge if the tenant requests release during the thirty-day period.
- Landlord must give notice to tenant of name and address of organization to which the tenant's property was delivered by
  - posting notice at the rented premises
  - posting notice at the place where the rent is received, and
  - mailing copy of notice by first-class mail to the tenant's last known address.

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## RESIDENTIAL LEASES-MOBILE HOME AND CONTENTS.

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If the tenant rents a mobile home space so that the tenant brings a mobile home on the landlord's lot, separate rules apply.

If the mobile home has a fair market value *of \$500 or less*, the landlord may dispose of the mobile home and its contents as specified in section I above.

- The landlord determines the value of the mobile home.

Because a mobile home is a motor vehicle, the landlord must notify DMV if the landlord wishes to sell the mobile home.

The landlord must get permission of the local tax collectors before moving the mobile home.

If the mobile home has a fair market value of *more than \$500*, the landlord must dispose of the mobile home and contents as provided in G.S. 42-2(e2).

- The mobile home must be titled in the name of the tenant. If owned by someone else, the landlord cannot acquire a landlord's lien in the mobile home.
- The landlord must get a judgment for possession and must have a writ of possession issued to enforce the judgment.
- After the writ has been executed, the landlord may immediately remove the property from the land and store it.
- The landlord must release the mobile home and contents to the tenant during regular business hours or at a time mutually agreed upon for 21 days after the writ has been executed.
- Twenty-one days after writ has been executed, whether the property remains on the premises or whether the landlord has removed and stored it, landlord has a lien on the property for the amount of rent due at the time the tenant vacated the premises; for the time up to 60 days from vacating the premises to the date of sale; for physical damages to the property beyond normal wear and tear; and for reasonable expenses costs and expenses of the sale.
  - The landlord must dispose of the property by selling it at a public auction pursuant to G.S. 44A-4.
  - The statute requires the landlord to post the notice of sale at the courthouse and to advertise in a newspaper in certain instances.
  - The landlord must give notice of the sale to the tenant.
  - Because the mobile home is a motor vehicle, the landlord may not sell the mobile home without notifying DMV and getting permission to sell the vehicle.
  - The purchaser may not move the mobile home without first getting permission from the local tax collector.

## COMMERCIAL LEASES.

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The old landlord's possessory lien statute, G.S. 44A-2(e), continues to apply to commercial leases.

Landlord may sell property.

- Under G.S. 44A-2(e) if property has been left on premises for at least 21 days after tenant vacated premises and landlord has a lawful claim for damages against tenant, may sell property.
- Lien is for amount of rent due at time tenant vacated and for the time, up to 60 days, from the vacating of the premises to the date of sale; for any sums necessary to repair damages to the premises caused by the tenant, except for normal wear and tear; and for the reasonable costs and expenses of selling the personal property.
- Notice must be given and property must be sold at public sale under provisions of G.S. 44A-4.
- If at any time before the expiration of the 21-day period tenant requests his property, landlord must turn it over to tenant.
- Lien does not have priority over any prior perfected security interests.

Landlord may store property.

- Under G.S. 44A-4(e) landlord may remove tenant's property and store it if left on the premises at least 21 days after the tenant vacates the premises or at least 10 days after the landlord has received a judgment for possession.
- Property placed in storage belongs to the tenant, who is entitled to recover it from storage.
- If property stored with person who in ordinary course of business stores property, that person will have a storage lien under G.S. 44A-2(a) and may require the tenant to pay the storage costs before releasing the property to him. (If property stored in self-storage facility, owner is entitled to a lien under G.S. 44A-41.)

Landlord may donate property to charity.

- Under G.S. 44A-2(e) if the total value of all property remaining is less than \$100, then any time more than 5 days after tenant has vacated or sheriff has padlocked the premises, landlord may remove the property and donate it to any charitable organization.