

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

2

HOUSE BILL 803
Committee Substitute Favorable 4/24/17

Short Title: Landlord Liability Changes.

(Public)

Sponsors:

Referred to:

April 13, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO CODIFY *DAVENPORT V. D.M. RENTAL PROPERTIES, INC.*, REGARDING
3 CRIMINAL RECORDS OF TENANTS, OCCUPANTS, AND GUESTS AND TO
4 ALLOW FOR AUTHORIZED INDIVIDUALS TO DIRECT THE REMOVAL OR
5 DISPOSAL OF CERTAIN PERSONAL PROPERTY OF A DECEDENT LOCATED IN
6 LEASED PREMISES.

7 The General Assembly of North Carolina enacts:

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

10 "**§ 42-14.5. Foreseeability not created by criminal record; no duty to screen.**

11 Notwithstanding any other duty or obligation which may be defined by this Chapter or
12 otherwise provided by law or any theory of liability, the criminal record of any prospective or
13 current residential lessee, occupant, or guest shall not make any future injury or damage arising
14 from that residential lessee, occupant, or guest foreseeable by the residential lessor or
15 residential lessor's agent, nor shall a residential lessor or a residential lessor's agent have a duty
16 to screen for, or to refuse to rent because of, the criminal record of a prospective or current
17 residential lessee, occupant, or guest."

18 **SECTION 1.(b)** G.S. 42-25.7 reads as rewritten:

19 "**§ 42-25.7. Distress and distraint not permitted.**

20 It is the public policy of the State of North Carolina that distress and distraint are prohibited
21 and that landlords of residential rental property shall have rights concerning the personal
22 property of their residential tenants only in accordance with G.S. 42-25.9(d), 42-25.9(g),
23 42-25.9(h), 42-36.2, 28A-25-2, or 28A-25-7."

24 **SECTION 2.(a)** G.S. 28A-25-1 reads as rewritten:

25 "**§ 28A-25-1. Collection of property by affidavit when decedent dies intestate.**

26 (a) When a decedent dies intestate leaving personal property, less liens and
27 encumbrances thereon, not exceeding twenty thousand dollars (\$20,000) in value, at any time
28 after 30 days from the date of death, any person indebted to the decedent or having possession
29 of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in
30 action belonging to the decedent shall make payment of the indebtedness or deliver the tangible
31 personal property or an instrument evidencing a debt, obligation, stock or chose in action to a
32 person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, or an heir
33 or creditor of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a
34 certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf
35 of the heir or creditor or the public administrator stating:



- 1 (1) The name and address of the affiant and the fact that the affiant is the public
2 administrator or an heir or creditor of the decedent;
- 3 (2) The name of the decedent and the decedent's residence at time of death;
- 4 (3) The date and place of death of the decedent;
- 5 (4) That 30 days have elapsed since the death of the decedent;
- 6 (5) That the value of all the personal property owned by the estate of the
7 decedent, less liens and encumbrances thereon, does not exceed twenty
8 thousand dollars (\$20,000);
- 9 (6) That no application or petition for appointment of a personal representative
10 is pending or has been granted in any jurisdiction;
- 11 (7) The names and addresses of those persons who are entitled, under the
12 provisions of the Intestate Succession Act, to the personal property of the
13 decedent and their relationship, if any, to the decedent; and
- 14 (8) A description sufficient to identify each tract of real property owned by the
15 decedent at the time of the decedent's death.

16 In those cases in which the affiant is the surviving spouse and sole heir of the decedent, not
17 disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected
18 pursuant to this section may exceed twenty thousand dollars (\$20,000) in value but shall not
19 exceed thirty thousand dollars (\$30,000) in value, after reduction for any spousal allowance
20 paid to the surviving spouse pursuant to G.S. 30-15. In such cases, the affidavit shall state: (i)
21 the name and address of the affiant and the fact that the affiant is the surviving spouse and is
22 entitled, under the provisions of the Intestate Succession Act, to all of the property of the
23 decedent; (ii) that the value of all of the personal property owned by the estate of the decedent,
24 less liens and encumbrances thereon, does not exceed thirty thousand dollars (\$30,000); and
25 (iii) the information required under subdivisions (2), (3), (4), (6), and (8) of this subsection.

26 ...
27 (d) The public administrator or an heir that has presented an affidavit as provided in
28 subsection (a) of this section shall be entitled to remove or otherwise dispose of the decedent's
29 personal property located in demised premises."

30 **SECTION 2.(b)** G.S. 28A-25-1.1 reads as rewritten:

31 "**§ 28A-25-1.1. Collection of property by affidavit when decedent dies testate.**

32 (a) When a decedent dies testate leaving personal property, less liens and encumbrances
33 thereon, not exceeding twenty thousand dollars (\$20,000) in value, at any time after 30 days
34 from the date of death, any person indebted to the decedent or having possession of tangible
35 personal property or an instrument evidencing a debt, obligation, stock or chose in action
36 belonging to the decedent shall make payment of the indebtedness or deliver the tangible
37 personal property or an instrument evidencing a debt, obligation, stock or chose in action to a
38 person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, a person
39 named or designated as executor in the will, devisee, heir or creditor, of the decedent, not
40 disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in
41 accordance with subsection (b) and made by or on behalf of the heir, the person named or
42 designated as executor in the will of the decedent, the creditor, the public administrator, or the
43 devisee, stating:

- 44 (1) The name and address of the affiant and the fact that the affiant is the public
45 administrator, a person named or designated as executor in the will, devisee,
46 heir or creditor, of the decedent;
- 47 (2) The name of the decedent and the decedent's residence at time of death;
- 48 (3) The date and place of death of the decedent;
- 49 (4) That 30 days have elapsed since the death of the decedent;

- 1 (5) That the decedent died testate leaving personal property, less liens and
2 encumbrances thereon, not exceeding twenty thousand dollars (\$20,000) in
3 value;
- 4 (6) That the decedent's will has been admitted to probate in the court of the
5 proper county and a duly certified copy of the will has been recorded in each
6 county in which is located any real property owned by the decedent at the
7 time of the decedent's death;
- 8 (7) That a certified copy of the decedent's will is attached to the affidavit;
- 9 (8) That no application or petition for appointment of a personal representative
10 is pending or has been granted in any jurisdiction;
- 11 (9) The names and addresses of those persons who are entitled, under the
12 provisions of the will, or if applicable, of the Intestate Succession Act, to the
13 property of the decedent; and their relationship, if any, to the decedent; and
- 14 (10) A description sufficient to identify each tract of real property owned by the
15 decedent at the time of the decedent's death.

16 In those cases in which the affiant is the surviving spouse, is entitled to all of the property
17 of the decedent, and is not disqualified under G.S. 28A-4-2, the property described in this
18 subsection that may be collected pursuant to this section may exceed twenty thousand dollars
19 (\$20,000) in value but shall not exceed thirty thousand dollars (\$30,000) in value, after
20 reduction for any spousal allowance paid to the surviving spouse pursuant to G.S. 30-15. In
21 such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that the
22 affiant is the surviving spouse and is entitled, under the provisions of the decedent's will, or if
23 applicable, of the Intestate Succession Act, to all of the property of the decedent; (ii) that the
24 decedent died testate leaving personal property, less liens and encumbrances thereon, not
25 exceeding thirty thousand dollars (\$30,000); and (iii) the information required under
26 subdivisions (2), (3), (4), (6), (7), (8), and (10) of this subsection.

27 ...

28 (d) The public administrator, a person named or designated as executor in the will,
29 devisee, or an heir that has presented an affidavit as provided in subsection (a) of this section
30 shall be entitled to remove or otherwise dispose of the decedent's personal property located in
31 the demised premises."

32 **SECTION 2.(c)** G.S. 28A-25-2 reads as rewritten:

33 **"§ 28A-25-2. Effect of affidavit.**

34 The person paying, delivering, transferring or issuing personal property or the evidence
35 thereof pursuant to an affidavit meeting the requirements of G.S. 28A-25-1(a) or
36 G.S. 28A-25-1.1(a) is discharged and released to the same extent as if the person dealt with a
37 duly qualified personal representative of the decedent. A lessor of the demised premises that, at
38 the direction of an affiant authorized pursuant to G.S. 28A-25-1(d) or G.S. 28A-25-1.1(d),
39 removes, throws away, or otherwise disposes of the personal property located in demised
40 premises is discharged and released to the same extent as if the lessor dealt with a duly
41 qualified personal representative of the decedent. The person or lessor is not required to see to
42 the application of the personal property or evidence thereof or to inquire into the truth of any
43 statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay,
44 deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its
45 payment, delivery, transfer, or issuance compelled upon proof of their right in an action
46 brought for that purpose by or on behalf of the persons entitled thereto. The court costs and
47 attorney's fee incident to the action shall be taxed against the person whose refusal to comply
48 with the provisions of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) made the action necessary. The
49 heir or creditor to whom payment, delivery, transfer or issuance is made is answerable and
50 accountable therefor to any duly qualified personal representative or collector of the decedent's
51 estate or to any other person having an interest in the estate."

1 **SECTION 3.** Section 1 of this act is effective when it becomes law. The remainder
2 of this act is effective when it becomes law and applies to affidavits submitted on or after that
3 date.