

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

**SESSION LAW 2007-353  
HOUSE BILL 947**

AN ACT TO REQUIRE THAT A NOTICE OF SALE IN FORECLOSURE PROCEEDINGS BE SENT TO CERTAIN TENANTS RESIDING IN THE PROPERTY TO BE SOLD, TO ALLOW THOSE TENANTS AFTER RECEIVING THE NOTICE TO TERMINATE THE RENTAL AGREEMENT UPON TEN DAYS' WRITTEN NOTICE TO THE LANDLORD, TO REQUIRE THAT THOSE TENANTS BE GIVEN THIRTY DAYS' NOTICE OF AN APPLICATION FOR AN ORDER FOR POSSESSION, AND TO CLARIFY THAT THE PROCEEDS IN THE AUTOMATION ENHANCEMENT AND PRESERVATION FUND MAY BE USED FOR THE PRESERVATION AND STORAGE OF PUBLIC RECORDS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 45-21.16A reads as rewritten:

**"§ 45-21.16A. Contents of notice of sale.**

(a) The notice of sale shall— Except as provided in subsection (b) of this section, the notice of sale shall include all of the following:

- (1) Describe the instrument pursuant to which the sale is held, by identifying the original mortgagors and recording data. If the record owner is different from the original mortgagors, the notice shall also list the record owner of the property, as reflected on the records of the register of deeds not more than 10 days prior to posting the notice. The notice may also reflect the owner not reflected on the records if ~~known;~~known.
- (2) Designate the date, hour and place of sale consistent with the provisions of the instrument and this ~~Article;~~Article.
- (3) Describe the real property to be sold in ~~such a manner as that is~~ reasonably calculated to inform the public as to what is being ~~sold,~~sold. ~~The which description may be in general terms and may incorporate by reference the description as used in the instrument containing the power of sale by reference thereto.~~ sale. Any property described in the instrument containing the power of sale which is not being offered for sale should also be described in ~~such a manner as to~~ enable prospective purchasers to determine what is and what is not being offered for ~~sale;~~sale.
- (4) Repealed by Session Laws 1967, c. 562, s. 2.
- (5) State the terms of the sale provided for by the instrument pursuant to which the sale is held, including the amount of the cash deposit, if any, to be made by the highest bidder at the ~~sale;~~sale.
- (6) Include any other provisions required by the instrument to be ~~included therein;~~included.
- (7) State that the property will be sold subject to taxes and special assessments if it is to be so ~~sold;~~ and sold.
- (8) State whether the property is being sold subject to or together with any subordinate rights or interests provided those rights and interests are sufficiently identified.

(b) In addition to the requirements contained in subsection (a) of this section, the notice of sale of residential real property with less than 15 rental units shall also state all of the following:

- (1) That an order for possession of the property may be issued pursuant to G.S. 45-21.29 in favor of the purchaser and against the party or parties in possession by the clerk of superior court of the county in which the property is sold.
- (2) Any person who occupies the property pursuant to a rental agreement entered into or renewed on or after October 1, 2007, may, after receiving the notice of sale, terminate the rental agreement upon 10 days' written notice to the landlord. The notice shall also state that upon termination of a rental agreement, the tenant is liable for rent due under the rental agreement prorated to the effective date of the termination."

**SECTION 2.** G.S. 45-21.17(4) reads as rewritten:

- "(4) The notice of sale shall be mailed by first-class mail at least 20 days prior to the date of sale to each party entitled to notice of the hearing provided by G.S. 45-21.16 whose address is known to the trustee or mortgagee and in addition shall also be mailed by first-class mail to any party desiring a copy of the notice of sale who has complied with G.S. 45-21.17A. If the property is residential and contains less than 15 rental units, the notice of sale shall also be mailed to any person who occupies the property pursuant to a residential rental agreement by name, if known, at the address of the property to be sold. If the name of the person who occupies the property is not known, the notice shall be sent to "occupant" at the address of the property to be sold. Notice of the hearing required by G.S. 45-21.16 shall be sufficient to satisfy the requirement of notice under this section provided such notice contains the information required by G.S. 45-21.16A."

**SECTION 3.** Article 5 of Chapter 42 of the General Statutes is amended by adding a new section to read:

**"§ 42-45.2 Early termination of rental agreement by military and tenants residing in certain foreclosed property.**

Any tenant who resides in residential real property containing less than 15 rental units that is being sold in a foreclosure proceeding under Article 2A of Chapter 45 of the General Statutes may terminate the rental agreement for the dwelling unit after receiving notice pursuant to G.S. 45-21.17(4) by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 10 days after the date of the notice of sale. Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at the time that would have been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due only to the early termination of the tenancy."

**SECTION 4.** G.S. 45-21.29 reads as rewritten:

**"§ 45-21.29. Orders for possession.**

- (a), (j) Repealed by Session Laws 1993, c. 305, s. 18.
- (k) Orders for possession of real property sold pursuant to this Article, in favor of the purchaser and against any party or parties in possession at the time of application therefor, may be issued by the clerk of the superior court of the county in which ~~such~~ the property is sold, when sold if all of the following apply:

- (1) ~~Such~~ The property has been sold in the exercise of the power of sale contained in any mortgage, deed of trust, leasehold mortgage, leasehold deed of trust, or a power of sale authorized by any other statutory provisions, provisions.
- (2) Repealed by Session Laws 1993, c. 305, s. 18.

- (2a) The provisions of this Article have been complied ~~with,~~with.
- (3) The sale has been consummated, and the purchase price has been ~~paid,~~paid.
- (4) The purchaser has acquired title to and is entitled to possession of the real property ~~sold,~~sold.
- (5) Ten days' notice has been given to the party or parties who remain in possession at the time application is made, ~~and or,~~ in the case of residential property containing 15 or more rental units, 30 days' notice has been given to the party or parties who remain in possession at the time the application is made.
- (6) Application is made by petition to ~~such the~~ clerk by the mortgagee, the trustee, the purchaser of the property, or any ~~such person's~~ authorized ~~representative.~~ representative of the mortgagee, trustee, or purchaser of the property.

(l) An order for possession issued pursuant to G.S. 45-21.29(k) shall be directed to the sheriff and shall authorize ~~him the~~ sheriff to remove all occupants and their personal property from the premises and to put the purchaser in possession, and shall be executed in accordance with the procedure for executing a writ or order for possession in a summary ejectment proceeding under G.S. 42-36.2. The purchaser shall have the same rights and remedies in connection with the execution of an order for possession and the disposition of personal property following execution as are provided to a landlord under North Carolina law, including Chapters 42 and 44A of the General Statutes.

(m) When the real property sold is situated in more than one county, the provisions of subsection (l) of this section shall be complied with in each county in which any part of the property is situated."

**SECTION 5.** G.S. 161-11.3 reads as rewritten:

**"§ 161-11.3. Automation Enhancement and Preservation Fund.**

Ten percent (10%) of the fees collected pursuant to G.S. 161-10 and retained by the county shall be set aside annually and placed in a nonreverting Automation Enhancement and Preservation Fund, the proceeds of which shall be expended on computer ~~and or~~ imaging technology and needs associated with the preservation and storage of public records in the office of the register of deeds. Nothing in this section shall be construed to affect the duty of the board of county commissioners to furnish supplies and equipment to the office of the register of deeds."

**SECTION 6.** This act becomes effective October 1, 2007. Section 3 of this act applies to residential rental agreements entered into or renewed on or after that date. Sections 1 and 2 apply to notices of sale issued on or after that date.

In the General Assembly read three times and ratified this the 1<sup>st</sup> day of August, 2007.

s/ Beverly E. Perdue  
President of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 11:49 a.m. this 16<sup>th</sup> day of August, 2007