



Apartment Association of North Carolina

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2019 North Carolina Legislature



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PRIVATE PROCESS SERVERS – HB 881 / SB 507

Representatives: Hardister, Szoka, Richardson, and Cunningham
Senators: Bishop, Edwards, and Nickel

PRIVATE PROCESS SERVERS-EVICTIONS

Sheriff's Departments are the only entity currently authorized to serve eviction notices, but they are often unable to keep up with demand leading to delays in eviction proceedings. Delays in eviction proceedings draw out the process making it more time-consuming and expensive for Housing Providers to evict tenants in breach of their lease agreement.

- Private process servers are allowable in North Carolina, in nearly every civil matter besides summary ejection – this includes highly contentious matters, such as divorce or child custody cases.
- Federal law allows the use of private process servers and a majority of states (over 30) already allow private process servers and use them regularly for service of process. This includes South Carolina, Virginia, Tennessee and Florida.
- House Bill 881/Senate Bill 507 would provide the option for counties with populations of 250,000+ to utilize private process servers in conjunction with county Sheriff departments to affix the summons on the door of the tenant, notifying them of the lawsuit and their court date.
- Even with the passage of this legislation, in most cases, landlords are still likely to use the Sheriff, as that is the cheaper option. HB881/SB507 would not require the use of private process servers, but would provide landlords with the option if their local Sheriff is unable to serve notice in a timely manner, or if they feel the need to expedite service.

COUNTIES WITH POPULATION OVER 250,000:

- Mecklenburg - Wake - Guilford - Forsyth - Cumberland - Durham - Buncombe

Background: In cases where a tenant has failed to pay their rent, a landlord can file an action for summary ejection and money owed for back due rent. Once the summons is filed, a letter is sent to the tenant with the Court date, and the Sheriff is required to serve the summons within 5 business days. If the person is successfully served personally, the landlord can proceed in Court to request an eviction and a judgment for the money owed. More typically though, the summons is posted (essentially taping/affixing the forms) on the tenant's door and then the landlord can proceed in Court to evict the tenant but may not receive a judgment for money owed since the tenant was not served personally. In many of the large counties in North Carolina, there is a long delay for the resident to be served by the Sheriff, which directly violates state law and unnecessarily drags out the eviction process.

HB881/SB507 would seek to address the delay in eviction hearings by allowing private process servers to affix the summons on the door of the tenant, notifying them of the lawsuit and their court date. Private process servers would be required to provide the court with a sworn affidavit verifying service of process was accomplished. The ability to use a private process server would be limited to the larger counties where law enforcement is already overburdened, and delays have been a major issue. The passage of this legislation will not eliminate the role of the Sheriff in providing private process servers, but would instead add a supplemental option for service by private process servers.

HISTORY OF LEGISLATION

In 2017, similar legislation passed in the House by a 90-28 vote, but did not receive a vote in the Senate. In 2018, the bill was referred to a study committee. In the end, the study committee recommended allowing private process servers for select counties.

AANC supports HB 881 & SB 507

Bill Status: Senate Judiciary Committee and House Judiciary

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EMOTIONAL SUPPORT ANIMALS – HB 796

Representatives: Grange, Szoka, and B. Turner

Summary: Establish needed protections to curtail ESA documentation abuse while maintaining the ability for a person with a legitimate disability to have an emotional support animal under the Federal Fair Housing Act.

Housing providers across the state and country have experienced a dramatic increase in requests for emotional support animals. To be prescribed an emotional support animal, the individual must have a verifiable disability. An emotional support animal is different than service animals, which are trained to perform a specific task, emotional support animals do not need training and instead provide a benefit to the individual with an emotional disability. Emotional support animals (dogs, cats, rabbits, snakes, rats, etc.) do not have to adhere to breed, weight, or overall number of pet restrictions imposed by a rental housing provider.

WORKING WITHIN THE PARAMETERS OF THE FAIR HOUSING ACT, THE LEGISLATION SEEKS TO:

- Codify the federal regulatory framework on emotional support animals.
- Create a reasonable definition of an emotional support animal.
- Require that the reliable verification is provided by a psychiatrist, physician, psychologist, or clinical social worker licensed in North Carolina.
- Establish penalties for a person who misrepresents their need; makes materially false statements to a health service provider to obtain documentation; or fits an animal, that is not an emotional support animal, with a harness, collar, vest, or sign that would cause a reasonable person to believe that animal is an emotional support animal.
- Health service providers can be penalized for providing verification of a person's disability status without having adequate professional knowledge of a person's condition or the provider charges a fee for written verification but provides no other service to the person.
- Provide immunity to the housing provider for an injury to another individual caused by an emotional support animal (i.e. if the animal bites another resident).

EMOTIONAL SUPPORT ANIMAL DOCUMENTATION FALSIFICATION EXAMPLE:

A new resident at time of move in presented their housing provider with a doctor's note saying his dog was an emotional support animal and stated that his grandfather passed away and he inherited his dog. We requested that he bring the dog in with vaccination records in order to enter the dog in his file. Later that day the resident returned with his dog and vaccination records. The records stated that his dog was a chocolate lab, but the dog appeared to be a pit bull breed. The housing provider called veterinarian to verify the dog's records. The veterinarian's office said they did not have any patient listed under the resident's or dogs name. The veterinarian's office also stated that the resident had created the documents themselves by using the veterinarian's website and the documentation was not issued by the veterinarian's office. The housing provider then called the doctor listed on the ESA paper work, to verify the authenticity of the ESA letter. The doctor had no record resident was a patient and asked for a copy of the letter. The housing provider sent the letter over and the doctor stated that was 100% not his signature and that the letter was falsified.

HB 796 provides the needed protection and parameters for emotional support animals and housing providers.

AANC supports HB 796

Bill Status: Passed House 111-3; assigned to Senate Rules & Operations Committee

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LANDLORD TENANT CHANGES – HB 880

Representatives: Hardister, Ross, Richardson, and Hunter

Summary: This bill includes a number of changes to Landlord-Tenant Law including provisions that will codify protections for landlords on the issue of criminal screenings, provide clarification on procedures related to deceased tenants, provide clarification on certain issues related to debt collection, and create a new process for vacating eviction judgements for tenants.

TENANT CRIMINAL RECORD SCREENING; CODIFICATION OF DAVENPORT V. D.M. RENTAL PROPERTIES (2011)

Criminal background check policies should not be based on fear of lawsuits or liability concerns. Housing Providers should have the flexibility to create criminal background policies that best provide housing to residents.

- HUD has stated that they believe the use of criminal background checks for residents may cause racial discrimination, intentionally or even unintentional, and violate fair housing laws.
- Criminal history policies are often created around the housing provider's liability concerns. If a resident with a criminal history causes harm, the housing provider could be sued under the claim that they should have had knowledge of the resident's criminal history and prohibited them from occupying the rental premises.
- This reality places the housing providers in a damned-if-you-do, damned-if-you-don't scenario which is unreasonable and unfair. Fortunately, the NC Court of Appeals in 2011 found (in the *Davenport* case) that a resident's criminal history is not a foreseeable indicator of future behavior, and housing providers should not be blamed.
- However, *Davenport* is just a single case and could be challenged at any time by personal injury attorneys. Legislative protection is needed to codify the logic of the *Davenport* case to allow housing providers to operate under a stable and predictable set of rules.

CLARIFICATION OF RIGHTS OF COLLECTION OF PROPERTY IN SMALL ESTATES

Estate law and NC Landlord-Tenant law need to be more accommodating in allowing the family of a deceased resident to work with the housing provider to arrange for the storage and disposal of the deceased resident's belongings.

- If a resident living alone passes away and no estate is filed there is a process whereby a housing provider may dispose of the personal property through sale or donation and regain possession of the home after a 90-day period.
- If a resident living alone passes away and a small estate is filed, the estate may collect the resident's property. Often times if a small estate is filed, only a portion of the resident's property is collected and the less valuable items are left in the home. There is currently no process for a housing provider to dispose of the property and obtain possession of the home outside of eviction if the estate has not taken all property.
- The proposed bill remedies this by expanding the estate's authority to allow a housing provider to dispose of any personal property that the estate does not want. The hope is that this will restore some degree of common sense to the small estate process, so that all parties can work together to properly dispose of all remaining personal property efficiently and with legal authority.

AANC supports HB 880

Bill Status: Passed House 115-1; assigned to Senate Rules & Operations Committee

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LANDLORD TENANT CHANGES – HB 880

Representatives: Hardister, Ross, Richardson, and Hunter

DEBT COLLECTION CLARIFICATION ON NCGS 42-46, NCGS 42-51, NCGS 6-18

Clarification and technical changes to parts of the landlord-tenant law. These changes will decrease the cost of housing, by affirming that costs incurred by a resident during the eviction process should be paid by the individual resident not the community as whole and correct inconsistent time requirements.

- Affirm NCGA 42-46: North Carolina law allows housing providers to collect fees incurred by residents during the eviction process; however, the law also limits the amounts that the housing provider can charge. These fees were negotiated and agreed upon by the Justice Center, Legal Aid and the Housing Rental Industry. Affirmation of this law is needed to protect against aggressive class action lawsuits that could exploit loop hole language in the existing law.
- Clarify NCGS 42-46: fees beyond curing default, such as "in any post-judgment attempt to settle account." This is merely clarification and technical correction stating the intent of the statute that allows these fees to be collected at any time in the future, so that the matter is not litigated at great expense later.
- Technical fix to 42-46(i)(2): This is merely a technical correction stating the intent of the statute that allows the housing provider to recover all costs actually paid to the court, and charge these as a pass-through fee. These costs include the sheriff's service of writ may be recovered by property owner, and 42-46(i)(1) to allow recovery of the writ filing fee.
- Clarification to NCGS 42-51(a)(8): "any fee, cost or amount" to replace "any fee" This is merely clarification and technical correction stating the intent of the statute, so it is clear that "fees" include "costs" and the matter is not litigated at great expense later.
- Technical fix to 42-46(i)(2): Court costs may be passed along to residents by prevailing housing providers under both "fee" statute and the "security deposit" statute but small claims courts often "tax" these costs to housing providers creating an inconsistency between the judgment and the statutes. This fix clarifies that these fees are collectible by the successful party notwithstanding the judgment.
- Remove language in NCGA 42-46(h)(3): limiting inclusion of complaint-filing fee until after complaint was served. This is a pass-through fee from the housing provider to resident for overhead processing work of eviction paperwork, removal of this language will eliminate the confusion and contradictory time requirements associated with this pass-through fee.

POST JUDGEMENT SATISFACTION AGREEMENTS

Often times after a resident receives an eviction ruling from the court, they are able to negotiate an agreement with the housing provider to "pay and stay" in the residence. However, the eviction ruling remains on the residence's rental history, this provision would allow the clerk of court to remove the eviction after the pay and stay agreement is reached.

- This proposal would add a new section to Rule 60 of the Rules of Civil Procedure, section (d), which would require a motion by the prevailing party (i.e. the Housing Provider) to have the judgment set aside and dismissed for summary ejection cases where there is an agreement between the Resident and Housing Provider to allow the Resident to stay in the rental premises, using an existing framework to allow the court to satisfy and vacate the judgment.
- This proposal would greatly reduce the number of evictions on record creating a more accurate rental history record for residents that fall behind on their rent and receive an eviction ruling but satisfy their obligations and are not removed from their residence.
- By reducing the number of evictions included in the rental history, tenants will have an easier time applying for future housing without the burden of eviction filings that have been settled appearing on their rental history.

AANC supports HB 880

Bill Status: Passed House 115-1; assigned to Senate Rules & Operations Committee

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