

**FORECLOSURE AND LANDLORD - TENANT LAWS
HOUSE BILL 947**

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House Bill 947 was signed by the Governor on August 16, 2007. It becomes effective October 1, 2007.

Section 1 of the bill amends G.S. 45-21.16A pertaining to the contents of the notice of sale.

G.S. 45-21-16A (a), pertaining to what the notice of sale shall include, has been made subject to new G.S. 45-21.16A (b), which provides:

- (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 of the bill amends G.S. 45-21.17(4), pertaining to who must be mailed notice of sale. The added language provides that:

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.

Sections 1 and 2 of the bill apply to notices of sale issued on or after October 1, 2007.

Section 3 of the bill adds a new section to the landlord – tenant statutes:

§ 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 3 applies to residential rental agreements entered or renewed on or after October 1, 2007.

Section 4 of the bill rewrites G.S. 45-21.29, pertaining to orders for possession. G.S. 45-21.29(k) says that an order for possession will be issued by the clerk if *all* of the conditions in G.S. 45-21.29(k) apply: (1) the property has been sold pursuant to foreclosure; (2) the foreclosure statutes have been complied with; (3) the sale has been consummated and the purchased price has been paid (4) the purchaser has acquired title *and is entitled to possession of the real property sold*; and (5) in the case of residential real property containing "15 or more rental units", 30 days notice has been given to the party or parties that remain in possession. (10 day notice must be given to other parties in possession.)

If a lease is for a term of more than 3 years from the making thereof (including renewals) it must be evidenced by a writing and signed by the party to be charged and the lease, or a sufficient memorandum thereof, must be recorded in order to be valid against lien creditors and purchasers for value. G.S. 22-2; G.S. 47-18; G.S. 47-117; G.S. 47-118; G.S. 47-120.

A lease that need not be recorded as required above would be valid against a purchaser for value or lien creditor taking its interest after the inception of the lease if the purchaser for value or lien creditor either has actual knowledge of the lease or if there is no such actual knowledge if the lessee is in actual possession of the leased premises, since actual possession is treated as the equivalent of notice to the purchaser and as a substitute for registration. Said knowledge or notice prevents the purchaser for value or lien creditor from having "bona fide-without notice" status. See the discussion in *Perkins v. Langdon*, 237 N.C. 159, 74 S.E. 2d 634 (1953).

It should be apparent that, regardless of the priority between a deed of trust being foreclosed and a lease, the amendments to the statutes noted above by House Bill 947 impose certain requirements. G.S. 45-21.16A (b) requires the notice of sale to tell tenants about their right to terminate the rental agreement because of the foreclosure. The notice of sale must be mailed to those tenants under G.S. 45-21.17(4). Those statutes, combined with G.S. 45-45.2, allow these tenants to terminate the leases. Note that these obligations under the foreclosure statutes and the rights of the tenants to terminate are *not* dependent upon whether or not the deed of trust has priority over the lease.

Further, G.S. 45-21.16A (b)'s reference to an order of possession under G.S. 45-21.29(k) does *not* mean that an order of possession can remove a tenant holding under a lease that has priority over a deed of trust under the rules discussed above. That is because G.S. 45-21.29(k) requires, among other things, that the foreclosure sale purchaser has acquired title *and is entitled to possession*. G.S. 45-21.29(k)(4). If a paying tenant is in possession under a lease that has priority over the foreclosed deed of trust, an order for possession cannot be issued against that tenant.