

2011-2012 UPDATE COURSE

SELECTED PROPERTY MANAGEMENT ISSUES

OUTLINE:
<u>WRITTEN AGENCY AGREEMENT</u>
<u>TENANT'S PERSONAL PROPERTY</u>

Learning Objective: Upon completing this Section, licensees should have a better understanding of the need for a written agency agreement with the owner before undertaking *any* property management services, as well as a lessor's legal obligations concerning the removal and disposal of a tenant's personal property.

WRITTEN AGENCY AGREEMENT

What services or acts may an agent perform on behalf of a lessor who has hired the agent to manage property owned by the lessor? Good question, and the answer in any given situation may be found by looking where? How about the broker's contract with the lessor, commonly known as a **property management agreement**, which generally grants the broker exclusive rights to manage the property for a specified term. Licensees must understand that while the Working with Real Estate Agents brochure is *not* required to be given in lease transactions, *a licensee must always have a written agency agreement with a property owner before the licensee provides any services. No exceptions.* The agency agreement is the employment contract between the owner and the broker and specifies the duties and obligations each owes to the other. Written agency agreements with owners have been required in sales transactions since January 1995 and in property management relationships since September 2002.

The services to be provided may run the gamut from procuring a tenant only, with no ongoing management responsibilities, to "full service" where the broker locates and screens tenants, enters into lease agreements on behalf of the owner, collects the rents, perhaps pays certain property expenses on behalf of the owner, responds to repair requests and handles the eviction of tenants, when necessary. *Any authority the broker claims to have to act on behalf of the owner arises out of the agency agreement and should be expressly stated therein.* Understand that the Commission does not dictate the contents of agency agreements beyond the minimal requirements set forth in **Rule A.0104**. The four things that must, by rule, be included in every written agency agreement for brokerage services are that:

- 1) the parties are identified, i.e., consumer and broker, and both sign the agreement;
- 2) the broker's license number is stated;
- 3) there is a definite date on which the agreement automatically expires;* and
- 4) the non-discrimination language required by A.0104(b) is included.

Beyond the foregoing four issues, the parties are free to contract for any and all services they wish. The * is to indicate an exception for property management. Most agency agreements must automatically terminate at the conclusion of the stated time period. However, the Rule states in relevant part: "...except that an agency agreement between a landlord and a broker to procure tenants or receive rents for the landlord's property may allow for automatic renewal so long as the landlord may terminate with notice at the end of any contract period and any subsequent renewal." Thus, a broker and owner could actually sign a new property management agreement each year, or they could enter into a management agreement in June 2011 for a one year term that would automatically renew for another year term unless the owner notified the broker in writing in June of any given year that the owner was terminating the agency relationship. The latter is the approach taken in the NCAR Standard Form 401, Paragraph 2 of which is reprinted in part below.

Duration of Agreement. This Agreement shall be binding when it has been signed and dated below by Owner and Agent. It shall become effective on _____, _____, and shall be for an initial term of _____. NOT LESS THAN _____ DAYS PRIOR TO THE CONCLUSION OF THE INITIAL TERM, EITHER PARTY MAY NOTIFY THE OTHER PARTY IN WRITING OF ITS DESIRE TO TERMINATE THIS AGREEMENT, IN WHICH CASE IT SHALL TERMINATE AT THE CONCLUSION OF THE INITIAL TERM. IF NOT SO TERMINATED, THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE TERMS OF _____ EACH UNLESS EITHER PARTY GIVES THE OTHER PARTY WRITTEN NOTICE OF ITS DESIRE TO TERMINATE THIS AGREEMENT AT LEAST _____ DAYS PRIOR TO THE CONCLUSION OF ANY SUCH RENEWAL TERM, IN WHICH CASE THIS AGREEMENT SHALL TERMINATE AT THE CONCLUSION OF SUCH TERM.....

For those licensees who are members or subscribers of a REALTOR® organization, there are several preprinted agency forms available, including Forms 401 and 402, exclusive property management agreements for long-term residential and vacation rentals respectively, and in the commercial arena, Form 590 is a commercial property management agreement. Other forms include a commercial buyer/tenant agency (Forms 530 & 532) and authority to lease or sell (Form 570) or merely authority to lease (Form 572), and neither of the latter two address any ongoing management obligations of the broker. Brokers who do not belong to any REALTOR® organization may not use any forms bearing the REALTOR® logo and will have to create their own agency agreement forms. These may be as simple or complex as the broker deems necessary and may be created by an attorney for the broker's future use or the broker may draft his/her own agency agreement because the broker is a party/principal to that agreement.

Customary Services

What are some of the services a broker typically may agree to provide when managing property for others? Again, it is up to the owner and broker to decide the scope of the broker's authority. Services customarily contracted for may include:

- advertising and showing the property;
- screening and procuring tenants;
- negotiating and entering into lease agreements;

- collecting rents and other monies due;
- paying enumerated expenses on behalf of the owner;
- responding to repair requests and overseeing necessary repairs;
- fulfilling duties imposed on landlords by State or local laws or ordinances;
- periodically inspecting the condition of the property and monitoring the tenant's compliance with the lease terms;
- initiating legal proceedings, if necessary, to regain possession of the property after a breach or holding over after the expiration of the tenancy.

The foregoing is intended to be illustrative, not exhaustive. The broker also should account periodically to the owner for all monies received and expended. The frequency of these reports should be stated in the management agreement.

Trust Account?

Commission staff occasionally is asked by a licensee *whether it is possible to engage in property management, but not have a trust account?* The answer, of course, is “it depends but *generally not.*” The only way a broker can avoid having a trust account is if the broker never receives any trust monies. The broker cannot be involved in the money chain at all; ***if monies pass through the broker's hands from the tenants for delivery to the owner***, even if it is a check payable to the owner, then the Commission's position is that ***those monies need to be deposited into the broker's trust account and a check written from the trust account to the appropriate parties.***

What if the broker merely receives the check made payable to the owner and writes “for deposit only” on the back of it and deposits it into the *owner's* checking account, but otherwise has no access to the owner's bank account? This would be inappropriate, as the check is delivered to the broker and as such, should be deposited into a trust account to establish the necessary audit trail. The only way to avoid this result, whether in a commercial or residential lease situation, is to have the tenants pay the periodic lease amount directly to the owner, whether by mailing a check to the owner, or depositing it in a drop box, or wire transfer to the owner's account, or however the owner and tenant agree.

If the broker is not going to be involved in collecting rents or paying expenses, then it would be prudent to expressly state that in the management agreement. But if the broker is not involved in the money stream, how does s/he know whether rent has been timely paid? How is the management fee paid? Voluntarily by the owner periodically? Would the broker still be capable of prosecuting a summary ejection proceeding on behalf of the owner when the broker has no personal knowledge of the alleged default or breach, or would the owner need to appear at the hearing and testify? Another factor to consider is that North Carolina law requires **all** residential tenant security deposits to be deposited in a trust account in a licensed and insured bank or savings institution *located in the State of North Carolina.* [G.S. 42-50.] The only way an owner can avoid this obligation is if s/he posts a bond in the amount of all the deposits.

Typically, an owner hires a broker to manage the leasing of owner's property so that the owner doesn't have to deal with all the headaches, but merely reaps the income. While there may be some owners who want to receive the rents directly from their tenants, more likely than

not they are going to want the broker to be involved in collecting and forwarding the rent, and as a practical matter, virtually all brokers who are doing property management will need to have at least one trust account.

Self-Help Prohibited in Residential Tenancies

Hopefully *ALL licensees* are aware that an *owner of residential rental property* can not just unilaterally change the locks on the property or otherwise interfere with the tenant's right to possess the premises without a court order. The public policy of North Carolina as to residential tenancies is clearly articulated in the General Statutes noted below.

G.S. 42-25.6: Manner of ejectment of residential tenants. "...a residential tenant shall be evicted, dispossessed or otherwise constructively or actually removed from his dwelling unit only in accordance with the procedure prescribed in Article 3 [summary ejectment] or Article 7 [expedited summary ejectment due to criminal activity] of this Chapter."

G.S. 42-25.7: Distress and distraint not permitted. "...distress and distraint are prohibited and ... landlords of residential rental property shall have rights concerning the personal property of their residential tenants only in accordance with ..." other statutes, which will be discussed shortly.

G.S. 42-25.8: Contrary Lease Provisions. "Any lease or contract provision contrary to this Article [2A] shall be void as against public policy."

Understand that whenever one talks about *state laws pertaining to residential tenancies*, these laws do not just apply to brokers, they *apply to ALL OWNERS of residential rental property located in North Carolina*, whether licensed or unlicensed, knowledgeable or ignorant. A broker may be subject to disciplinary action if s/he violates any landlord-tenant laws (or fair housing, for that matter) in managing residential rental property owned either by others or by the broker. When brokers encounter unlicensed owners who are renting property they own, but who are violating some provision of state landlord-tenant law, e.g., the tenant security deposit is in the owner's personal checking account, rather than in a trust or escrow account and there is no bond, the broker is encouraged to alert the owner to the fact that they are violating state law. At the very least, the broker could suggest that the owner go to the Real Estate Commission's website, www.ncrec.gov, and click on Publications and then "*Renting Residential Real Estate*" and "*Tenant Security Deposits*" and either print or download these free publications. There is a third free publication, "*Fair Housing*," and all three of these brochures are available in Spanish.

Commercial Tenant Laws

There are few analogous State laws regulating commercial landlord-tenant relationships, in part because commercial tenants are presumed to possess sufficient knowledge and business acumen to protect their own interests. While there are some statutes on point, one of which will be mentioned below, when one wants to know *what are the respective rights and obligations of a commercial lessor and lessee*, the answer often is: *what does the lease agreement say*, since there are few state laws governing the relationship. For example, there is no requirement that a commercial tenant security deposit be held in a trust account anywhere, so if the owner of a retail

center with 15 different tenants is managing the leasing and operation of the retail center without the services of a broker, that owner may keep the commercial tenant security deposits in any account it wishes, unless restricted by the terms of each lease agreement. Similarly, a commercial lessor may have many more options available to it in the event of a tenant's default or breach, depending on the lease terms and absent applicable state law.

Let there, however, be no mistake or confusion: *any monies a broker receives managing property for others, whether commercial or residential, must be deposited into a trust or escrow account pursuant to Real Estate License Law and Commission rules*, which laws and rules do not apply to or bind non-licensees.

TENANT'S PERSONAL PROPERTY

Does a lessor have any claim to personal property belonging to the tenant? It depends; if a commercial/non-residential lessor, then possibly; if a residential lessor, then no.

Commercial Leased Property

Chapter 44A of the General Statutes is titled "Statutory Liens and Charges." Commercial lessors and their agents should be aware that **G.S. 44A-2(e)** provides in pertinent part:

(e) Any lessor of *nonresidential demised premises* has a lien on all furniture, furnishings, trade fixtures, equipment and other personal property to which the tenant has legal title and which remains on the demised premises *if* (i) the tenant has vacated the premises for 21 or more days after the paid rental period has expired, *and* (ii) the lessor has a lawful claim for damages against the tenant. If the tenant has vacated the premises for 21 or more days after the expiration of the paid rental period, or if the lessor has received a judgment for possession of the premises which is executable and the tenant has vacated the premises, then all property remaining on the premises may be removed and placed in storage. If the total value of all property remaining on the premises is less than one hundred dollars (\$100.00), then it shall be deemed abandoned five days after the tenant has vacated the premises, and the lessor may remove it and may donate it to any charitable institution or organization. Provided, the lessor shall not have a lien if there is an agreement between the lessor or his agent and the tenant that the lessor shall not have a lien. This *lien* shall be for the *amount* of any rents which were due the lessor at the time the tenant vacated the premises and for the time, up to 60 days, from the vacating of the premises to the date of sale; and for any sums necessary to repair damages to the premises caused by the tenant, normal wear and tear excepted; and for reasonable costs and expenses of sale. The *lien* created by this subsection *shall be enforced by sale at public sale pursuant to the provisions of G.S. 44A-4(e)*. This lien shall not have priority over any security interest in the property which is perfected at the time the lessor acquires this lien.

Thus, *absent contrary language in a commercial lease agreement*, a commercial ("nonresidential") lessor will have an automatic lien on any personal property left on the

premises by a commercial tenant who has been gone more than 21 days following the expiration of the paid rental period *and* the lessor has claims for damages against the lessee. Once the tenant has been gone 21 or more days after the last paid date of the tenancy or vacates once the lessor obtains an order of possession, then the lessor *may immediately remove and store the property*; if the total value of all the property is less than \$100, then it “shall be deemed abandoned five days after the tenant has vacated the premises and the lessor may remove it and may donate it to any charitable institution or organization.” Presumably the lessor not only may remove the property, but dispose of it as well, rather than donate it to a charity, but the statute mentions neither storing nor disposing of the property. The public sale procedure is set forth in G.S. 44A-4 and licensees are referred to that statute, if interested.

Residential Leased Property

State law is completely different for lessors of residential rental property. The lessor/landlord has *no statutory lien* on any of the tenant’s personal property; once removed, they must provide certain notices to the tenant concerning where the tenant’s personal property is, it must be kept for the tenant to claim up to 30 days following the termination of the tenancy, depending on the value of the property, and it must be returned to the tenant whenever requested so long as it still is in the lessor’s possession and has not yet been sold. The main statute is **G.S. 42-25.9**, “Remedies,” which is reprinted in full at the end of this Section. Subparagraphs **(d)**, **(g)** and **(h)** specifically address tenants’ personal property, but (a) and (b) are worthy of note as well. They state in pertinent part:

(a) If any lessor, landlord, or agent removes or attempts to remove a tenant from a dwelling unit in any manner contrary to this Article, the tenant shall be entitled to recover possession or to terminate his lease and the lessor, landlord or agent shall be liable to the tenant for damages caused by the tenant's removal or attempted removal. Damages in any action brought by a tenant under this Article shall be limited to actual damages as in an action for trespass or conversion and shall not include punitive damages, treble damages or damages for emotional distress.

(b) If any lessor, landlord, or agent seizes possession of or interferes with a tenant's access to a tenant's or household member's personal property in any manner not in accordance with [cited applicable statutes] the tenant or household member shall be entitled to recover possession of his personal property or compensation for the value of the personal property, and, in any action brought by a tenant or household member under this Article, the landlord shall be liable to the tenant or household member for actual damages, but not including punitive damages, treble damages or damages for emotional distress.

While the remedy for wrongful removal or interference with access to personal property or the leased property may be limited to actual damages under the statutes quoted above, subparagraph (c) goes on to state: “The remedies created by this section are supplementary to all existing common-law and statutory rights and remedies.” Thus, for particularly egregious conduct, tenants could also pursue legal claims under other theories of law, such as conversion and intentional infliction of emotional distress.

Any licensee who undertakes property management of any kind, but particularly residential property management, should be well-acquainted with and conform to applicable state laws. A recent anecdote was heard about an owner who was managing his own property. Apparently the tenants were gone for a seemingly long period of time, six to eight weeks, during which absence they became delinquent for the current month's rent. The owner "figured" that the tenants must have abandoned the leased property, even though all the tenants' personal property was still in the house. The owner reclaimed possession of the house, removed (and hopefully stored) the tenants' personal property and changed the locks. Of course within approximately a week of this action, the tenants returned and were stunned by the developments. They ultimately filed criminal charges against the owner who ended up with a felony conviction of breaking and entering and conversion of property. His defense that it was "his house" was to no avail, as he contractually had relinquished the legal right to possess the property and had failed to follow state law by filing a summary ejectment action had he wished to terminate the tenants' right to possession.

So, what must a landlord/agent do with personal property left behind by a tenant? **G.S. 42-25.9(d), (g) and (h)** are reprinted at the end of this Section and basically provide as follows:

- If the value of the personal property "abandoned" by the tenant is \$500 or less, then the landlord may "... deliver the property into the custody of a nonprofit organization regularly providing free or at a nominal price clothing and household furnishings to people in need ..." *so long as* the nonprofit agrees to identify and separately store the property for 30 days and to release it to the tenant if requested within that 30 day period. The landlord must post a notice both at the dwelling previously rented, as well as at any location where rents were received, *and* must mail the notice by first class mail to the tenant at the tenant's last known address informing the tenant of the name and address of the nonprofit that is holding the tenant's personal property. Note that the statute expressly states that the notice *shall not* include a description of the property.
- If the landlord regains possession pursuant to the execution of a writ of possession and finds personal property still in the premises, then the landlord must hold that personal property for 10 days. "...During the 10-day period ... a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter." If the tenant requests the property within that 10 day period, the landlord must release it to the tenant "...during regular business hours or at a time agreed upon." If the landlord chooses to sell the property at a private or public sale, s/he must give written notice to the tenant by first class mail of the date, time and place of sale at least seven days prior to the sale date, which seven day period may run concurrently with the ten day holding period. The notice also must advise the tenant that if the sale proceeds exceed all sums due the landlord, then any surplus will be paid to the tenant if requested within 10 days of the sale, and thereafter, any surplus shall be "... delivered to the government of the county in which the rental property is located." The statute doesn't say for what purpose.
- Lastly, if the *total value* of all personal property remaining on the premises at the time a writ of possession is executed is *less than \$100*, then the landlord must only hold the

personal property for *five days* following execution of the writ. If the tenant does not return and request the property within five days of the execution of the writ, then the property shall be deemed abandoned and the landlord may throw it away or otherwise dispose of it.

Thus, the three options are:

1) give to a nonprofit to hold for 30 days if the total value of all personal property is \$500 or less and post and mail the required notices to the tenant;

2) hold the property for 10 days following the execution of a writ of possession and then either sell or dispose of the property; or

3) hold for only 5 days following the execution of a writ of possession, if the total value of all personal property is less than \$100, after which time the landlord may throw the property away or otherwise dispose of it.

CAUTION: Prudent brokers also would be well advised to check the Uniform Commercial Code (UCC) filings at their local Register of Deeds office *before* disposing of a tenant's personal property to learn whether any creditor has a security interest in the tenant's personal property. A very experienced broker/property manager who diligently followed the law in all respects and disposed of a residential tenant's personal property pursuant to state law, nonetheless found himself being sued by the creditor who had sold the tenant the furniture on an installment payment basis and who had retained a security interest in the household goods and furniture pending payment in full, which had not happened. It had never occurred to the broker to check the UCC registry under the tenant's name to discover the creditor's security interest.

How can one tell if a tenant has abandoned personal property? **G.S. 42-25.9(e)** states:

... personal property shall be deemed abandoned if the landlord finds evidence that clearly shows the premises has been voluntarily vacated after the paid rental period has expired and the landlord has no notice of a disability that caused the vacancy. *A presumption of abandonment shall arise 10 or more days after the landlord has posted conspicuously a notice of suspected abandonment both inside and outside the premises and has received no response from the tenant.*

[Emphasis added.]

Note that there must be "***evidence that clearly shows***" that the tenant has ceased occupying the premises in order to be able to utilize this procedure. Thus, where the tenant hasn't been seen, but all of their property is still in the premises as in the anecdote above, there would not appear to be any evidence that the tenant has voluntarily vacated. If a landlord wanted to be restored to possession in such a case, s/he should file for summary ejectment and obtain the necessary court order to regain possession and avoid potential liability.

Text of Current Law concerning disposal of residential tenant's personal property as of June 1, 2011.

§ 42-25.9. Remedies.

(a) If any lessor, landlord, or agent removes or attempts to remove a tenant from a dwelling unit in any manner contrary to this Article, the tenant shall be entitled to recover possession or to terminate his lease and the lessor, landlord or agent shall be liable to the tenant for damages caused by the tenant's removal or attempted removal. Damages in any action brought by a tenant under this Article shall be limited to actual damages as in an action for trespass or conversion and shall not include punitive damages, treble damages or damages for emotional distress.

(b) If any lessor, landlord, or agent seizes possession of or interferes with a tenant's access to a tenant's or household member's personal property in any manner not in accordance with G.S. 44A-2(e2), 42-25.9(d), 42-25.9(g), 42-25.9(h), or G.S. 42-36.2 the tenant or household member shall be entitled to recover possession of his personal property or compensation for the value of the personal property, and, in any action brought by a tenant or household member under this Article, the landlord shall be liable to the tenant or household member for actual damages, but not including punitive damages, treble damages or damages for emotional distress.

(c) The remedies created by this section are supplementary to all existing common-law and statutory rights and remedies.

(d) If any tenant abandons personal property of five hundred dollar (\$500.00) value or less in the demised premises, or fails to remove such property at the time of execution of a writ of possession in an action for summary ejectment, the landlord may, as an alternative to the procedures provided in G.S. 42-25.9(g), 42-25.9(h), or 42-36.2, deliver the property into the custody of a nonprofit organization regularly providing free or at a nominal price clothing and household furnishings to people in need, upon that organization agreeing to identify and separately store the property for 30 days and to release the property to the tenant at no charge within the 30-day period. A landlord electing to use this procedure shall immediately post at the demised premises a notice containing the name and address of the property recipient, post the same notice for 30 days or more at the place where rent is received, and send the same notice by first-class mail to the tenant at the tenant's last known address. Provided, however, that the notice shall not include a description of the property.

(e) For purposes of subsection (d), personal property shall be deemed abandoned if the landlord finds evidence that clearly shows the premises has been voluntarily vacated after the paid rental period has expired and the landlord has no notice of a disability that caused the vacancy. A presumption of abandonment shall arise 10 or more days after the landlord has posted conspicuously a notice of suspected abandonment both inside and outside the premises and has received no response from the tenant.

(f) Any nonprofit organization agreeing to receive personal property under subsection (d) shall not be liable to the owner for a disposition of such property provided that the property has been separately identified and stored for release to the owner for a period of 30 days.

(g) Ten days after being placed in lawful possession by execution of a writ of possession, a landlord may throw away, dispose of, or sell all items of personal property remaining on the premises, except that in the case of the lease of a space for a manufactured home as defined in G.S. 143-143.9(6), G.S. 44A-2(e2) shall apply to the disposition of a manufactured home with a current value in excess of five hundred dollars (\$500.00) and its contents by a landlord after

being placed in lawful possession by execution of a writ of possession. During the 10-day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter. Upon the tenant's request prior to the expiration of the 10-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. If the landlord elects to sell the property at public or private sale, the landlord shall give written notice to the tenant by first-class mail to the tenant's last known address at least seven days prior to the day of the sale. The seven-day notice of sale may run concurrently with the 10-day period which allows the tenant to request possession of the property. The written notice shall state the date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment of unpaid rents, damages, storage fees, and sale costs, shall be disbursed to the tenant, upon request, within 10 days after the sale, and will thereafter be delivered to the government of the county in which the rental property is located. Upon the tenant's request prior to the day of sale, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. The landlord may apply the proceeds of the sale to the unpaid rents, damages, storage fees, and sale costs. Any surplus from the sale shall be disbursed to the tenant, upon request, within 10 days of the sale and shall thereafter be delivered to the government of the county in which the rental property is located.

(h) If the total value of all property remaining on the premises at the time of execution of a writ of possession in an action for summary ejectment is less than one hundred dollars (\$100.00), the property shall be deemed abandoned five days after the time of execution, and the landlord may throw away or dispose of the property. Upon the tenant's request prior to the expiration of the five-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. (1981, c. 566, s. 1; 1985, c. 612, ss. 1-4; 1995, c. 460, ss. 1-3; 1999-278; ss. 1, 2.)

§ 42-36.2. Notice to tenant of execution of writ for possession of property; storage of evicted tenant's personal property.

(a) When Sheriff May Remove Property. – Before removing a tenant's personal property from demised premises pursuant to a writ for possession of real property or an order, the sheriff shall give the tenant notice of the approximate time the writ will be executed. The time within which the sheriff shall have to execute the writ shall be no more than seven days from the sheriff's receipt thereof. The sheriff shall remove the tenant's property, as provided in the writ, no earlier than the time specified in the notice, unless:

- (1) The landlord, or his authorized agent, signs a statement saying that the tenant's property can remain on the premises, in which case the sheriff shall simply lock the premises; or
- (2) The landlord, or his authorized agent, signs a statement saying that the landlord does not want to eject the tenant because the tenant has paid all court costs charged to him and has satisfied his indebtedness to the landlord.

Upon receipt of either statement by the landlord, the sheriff shall return the writ unexecuted to the issuing clerk of court and shall make a notation on the writ of his reasons. The sheriff shall attach a copy of the landlord's statement to the writ. If the writ is returned unexecuted because the landlord signed a statement described in subdivision (2) of this

subsection, the clerk shall make an entry of satisfaction on the judgment docket. If the sheriff padlocks, the costs of the proceeding shall be charged as part of the court costs.

(b) Sheriff May Store Property. – When the sheriff removes the personal property of an evicted tenant from demised premises pursuant to a writ or order the tenant shall take possession of his property. If the tenant fails or refuses to take possession of his property, the sheriff may deliver the property to any storage warehouse in the county, or in an adjoining county if no storage warehouse is located in that county, for storage. The sheriff may require the landlord to advance the cost of delivering the property to a storage warehouse plus the cost of one month's storage before delivering the property to a storage warehouse. If a landlord refuses to advance these costs when requested to do so by the sheriff, the sheriff shall not remove the tenant's property, but shall return the writ unexecuted to the issuing clerk of court with a notation thereon of his reason for not executing the writ. Except for the disposition of manufactured homes and their contents as provided in G.S. 42-25.9(g) and G.S. 44A-2(e2), within 10 days of the landlord's being placed in lawful possession by execution of a writ of possession and upon the tenant's request within that 10-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. During the 10-day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter. After the expiration of the 10-day period, the landlord may throw away, dispose of, or sell the property in accordance with the provisions of G.S. 42-25.9(g). If the tenant does not request release of the property within 10 days, all costs of summary ejectment, execution and storage proceedings shall be charged to the tenant as court costs and shall constitute a lien against the stored property or a claim against any remaining balance of the proceeds of a warehouseman's lien sale.

(c) Liability of the Sheriff. – A sheriff who stores a tenant's property pursuant to this section and any person acting under the sheriff's direction, control, or employment shall be liable for any claims arising out of the willful or wanton negligence in storing the tenant's property.

(d) Notice. – The notice required by subsection (a) shall, except in actions involving the lease of a space for a manufactured home as defined in G.S. 143-143.9(6), inform the tenant that failure to request possession of any property on the premises within 10 days of execution may result in the property being thrown away, disposed of, or sold. Notice shall be made by one of the following methods:

- (1) By delivering a copy of the notice to the tenant or his authorized agent at least two days before the time stated in the notice for serving the writ;
- (2) By leaving a copy of the notice at the tenant's dwelling or usual place of abode with a person of suitable age and discretion who resides there at least two days before the time stated in the notice for serving the writ; or
- (3) By mailing a copy of the notice by first-class mail to the tenant at his last known address at least five days before the time stated in the notice for serving the writ. (1983, c. 672, s. 1; 1995, c. 460, s. 6; 1999-278, ss. 3, 4.)