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Carteret County

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Hoke County

EMAIL TO: All Sheriffs

FROM: Eddie Caldwell
Executive Vice President and General Counsel
North Carolina Sheriffs' Association

SENT: April 1, 2020

SUBJECT: Executive Order No. 124 --- Provision Regarding a Sheriff's Duty
to Execute Valid Writs for Possession of Property

On March 31, 2020, Governor Roy Cooper issued Executive Order No. 124. For your convenience, a copy of Executive Order No. 124 is attached to this email.

This Executive Order contains numerous regulatory restrictions for utility service providers, such as restrictions on utility shut-offs, utility late fees and utility reconnection fees, in addition to providing recommendations for telecommunications providers, banks and mortgage companies related to providing flexibility to customers during the COVID-19 pandemic.

Section 3 of the Governor's Executive Order No. 124 states: "[the Governor] and the Attorney General strongly encourage sheriffs to delay, until regular court operations resume, the execution of any Writs of Possession for Real Property that have already been issued, consistent with the spirit of the [Chief Justice's March 19, 2020 Order] and in support of public health and public safety."

We previously sent information to you on the issue of whether or not sheriffs possess the legal authority to stop executing court ordered Writs for Possession of Property during a declared state of emergency. A copy of the Association's March 20, 2020 email to sheriffs is also attached for your reference.

There are clear statutory mandates for the sheriff to execute a valid Writ for Possession of Property, which "shall" be served within 5 days after its receipt by the sheriff. Because the actions of a sheriff who fails to serve a writ as mandated by statute could be viewed as failing to perform a duty mandated by our General Statutes, you may wish to consult with your own legal advisor or county attorney prior to making a decision to stop executing Writs for Possession of Property that have been issued and ordered by the courts.



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The North Carolina Sheriffs' Association is a Non-Profit, tax exempt organization recognized by the I.R.S.

Email to All Sheriffs

Executive Order No. 124 --- Provision Regarding a Sheriff's Duty to Execute Valid Writs for Possession of Property

April 1, 2020

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If you have any questions or need any additional information, please do not hesitate to contact Matthew Boyatt, NCSA Deputy General Counsel, at mboyatt@ncsheriffs.net or 919-459-6467.

Thanks...Eddie C.



Edmond W. (Eddie) Caldwell, Jr.

Executive Vice President and General Counsel

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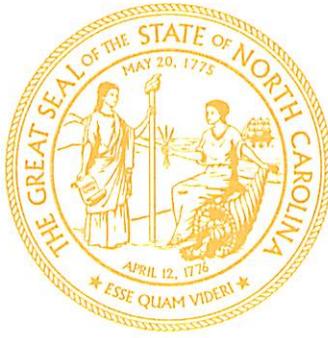
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North Carolina Sheriffs' Association

Proudly Serving the Sheriffs and Citizens of North Carolina since 1922



State of North Carolina

ROY COOPER
GOVERNOR

March 31, 2020

EXECUTIVE ORDER NO. 124

ASSISTING NORTH CAROLINIANS BY PROHIBITING UTILITY SHUT-OFFS, LATE FEES, AND RECONNECTION FEES; PROVIDING GUIDANCE ABOUT RESTRICTIONS ON EVICTIONS; AND ENCOURAGING TELECOMMUNICATIONS PROVIDERS, BANKS, AND MORTGAGE SERVICERS TO PROVIDE ASSISTANCE AND FLEXIBILITY TO THEIR CUSTOMERS

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State’s response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina (“Declaration of a State of Emergency”); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the “Stafford Act”); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq.* and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; and

WHEREAS, the undersigned has issued Executive Order Nos. 117 – 122 for the purposes of protecting the health, safety and welfare of the people of North Carolina; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, the North Carolina Department of Health and Human Services (“NCDHHS”) has confirmed the number of cases of COVID-19 in North Carolina continues to rise and has lab documentation that community spread has occurred; and

WHEREAS, hospital administrators and health care providers have expressed concerns that unless the spread of COVID-19 is limited, existing health care facilities may be insufficient to care for those who become sick; and

WHEREAS, to mitigate further community spread of COVID-19 and to reduce the burden on the state's health care providers and facilities, it is necessary to limit person-to-person contact in workplaces and communities; and

WHEREAS, such limitations on person-to-person contact are reasonably necessary to address the public health risk posed by COVID-19; and

WHEREAS, due to the State of Emergency, many North Carolinians must stay home, many must also work from home, and many businesses have been ordered closed, to slow the spread of COVID-19, and any dislocations that require people to leave their homes increase the risk of spread; and

WHEREAS, any disruptions or dislocations that would require people to leave their homes increase the risk of spread of COVID-19; and

WHEREAS, the economic effects of the pandemic have broadly affected utility customers across the state; and

WHEREAS, utility services are essential to the continued health and safety of residential utility customers, to the ability of workers and employers to engage in teleworking, and to the continued economic viability of business utility customers, even as the economic effects of the pandemic threaten customers' ability to pay for those utility services; and

WHEREAS, on March 19, 2020, the North Carolina Utilities Commission ("Utilities Commission" or "Commission") issued an Order Suspending Utility Disconnections for Non-Payment, Allowing Reconnection, and Waiving Certain Fees; and

WHEREAS, the Utilities Commission's March 19, 2020 order applied to only some of the utilities that are necessary for the continued well-being of North Carolina residents and the continued viability of North Carolina businesses; and

WHEREAS, the undersigned has determined that it is in the best interest of the people of North Carolina to enact, for all utilities, prohibitions and restrictions similar to and consistent with the Utilities Commission's March 19, 2020 order; and

WHEREAS, during this emergency, North Carolinians rely heavily on mass media and telecommunications systems as part of multiple critical activities, including (1) the public dissemination of critical information regarding governmental orders and advisories in response to COVID-19, including stay at home orders, shifts in the public school calendar, and announcements regarding the availability of resources; (2) educational activities, as students and educators have been required to stay at home but are continuing to participate in educational and instructional activities, many of which require the use of online resources and means of communication; (3) the provision of remote tele-medicine services, as urged by NCDHHS, to preserve healthcare system capacity to address the COVID-19 pandemic; and (4) teleworking that allows many businesses, non-profits, governmental agencies, and other organizations to continue to carry out their essential functions; and

WHEREAS, to minimize the possibility of mandatory measures that may need to be taken in the future, the undersigned urges all telecommunications companies serving North Carolina customers to voluntarily provide flexibility to their customers, including through the measures set forth below; and

WHEREAS, the economic effects of the COVID-19 pandemic have led to loss of income for many in North Carolina, making it difficult for many to make timely rental housing payments, creating a risk of eviction; and

WHEREAS, evictions and disconnections of utility services would exacerbate public health and safety risks because of dislocated customers; and

WHEREAS, in orders issued on March 13 and March 19, 2020, the Chief Justice of the Supreme Court of North Carolina exercised her authority under N.C. Gen. Stat. § 7A-39(b)(2) to order most district court and superior court proceedings to be scheduled or rescheduled no sooner than April 17, 2020; and to order that pleadings, motions, notices, and other documents and papers that were or are due to be filed in any county of this state on or after March 16, 2020 and before the close of business on April 17, 2020 in civil actions, criminal actions, estates, and special proceedings shall be deemed to be timely filed if they are filed before the close of business on April 17, 2020; and to order that all other acts that were or are due to be done in any county of this state on or after March 16, 2020 and before the close of business on 17 April 2020 in civil actions, criminal actions, estates, and special proceedings shall be deemed to be timely done if they are done before the close of business on April 17, 2020; and

WHEREAS, the U.S. Department of Housing and Urban Development issued an order dated March 18, 2020, imposing a sixty (60) day moratorium on evictions and foreclosures for single family homeowners with FHA-insured mortgages; and

WHEREAS, the undersigned and the Attorney General wish to provide clear guidance to the public about the effect of the Chief Justice's order on evictions; and

WHEREAS, because of the economic effects of the COVID-19 pandemic, many North Carolinians are enduring financial hardship and financial insecurity; and

WHEREAS, the undersigned encourages North Carolina-licensed or North Carolina-regulated financial institutions, including but not limited to banks and mortgage servicers, to provide assistance and flexibility to their customers; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7), the undersigned is authorized and empowered to utilize the services, equipment, supplies, and facilities of political subdivisions, and their officers and personnel are required to cooperate with and extend such services and facilities to the undersigned upon request; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. §§ 75-14, 75-15, 114-2(2), and 114-2(8), the Attorney General has the authority to bring civil actions to enforce compliance with the State's Unfair or Deceptive Trade Practices Act, to represent State agencies in litigation, and to institute or intervene in proceedings before any courts and regulatory bodies on behalf of the State and the using and consuming public; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to “give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article”; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(3), the undersigned may take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(3), the undersigned, with the concurrence of the Council of State, may regulate and control the maintenance, extension, and operation of public utility services and facilities; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a State agency or political subdivision which restricts the immediate relief of human suffering; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5), the undersigned, with the concurrence of the Council of State, may perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State consistent with the Governor’s emergency powers authority in N.C. Gen. Stat. § 166A-19.30; and

WHEREAS, under the terms of N.C. Gen. Stat. § 166A-19.70(a), utilities are considered critical infrastructure for the State of North Carolina.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Assistance for North Carolina Utility Customers

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. Definitions

1. In this Section of this Executive Order, “Utility Service Providers” means all political subdivisions, organizations, quasi-governmental entities, and businesses that provide directly to end-user residential customers electric, natural gas, water, or wastewater services, as well as all providers of a combination of these services.
2. This Section applies to all Utility Service Providers, regardless whether they are investor-owned public utilities, are private companies, are member-owned cooperatives, or are owned or operated by a political subdivision of the State or a quasi-governmental agency. This Section applies whether services are pre-paid or post-paid.
3. The restrictions placed on Utility Service Providers by this Section should, in cases of any ambiguity, be interpreted to be consistent with the restrictions imposed upon certain Utility Service Providers by the North Carolina Utilities Commission in its March 19, 2020 Order Suspending Utility Disconnections for Non-Payment, Allowing Reconnection, and Waiving Certain Fees, Docket M-2, Sub 158.

B. Prohibiting utilities from terminating service. No Utility Service Provider shall terminate the service of a residential customer for nonpayment. Utility Service Providers may terminate service of a customer when necessary as a matter of safety or when requested by the customer.

- C. **Late fees and payment arrangements.** A Utility Service Provider shall not bill or collect any fee, charge, penalty, or interest for a late or otherwise untimely payment that becomes due from the date of this Executive Order. Customers shall be provided the opportunity to make reasonable payment arrangements to pay off over at least a six (6) month period any arrearages accumulated during the effective period of this Executive Order and any order extending this Executive Order and 180 days thereafter. The six (6) month payoff period shall be calculated from the date of termination of this Section of this Executive Order or, if other applicable Executive Orders extend the protections of this Section, from the date of termination of the last Order that extends such protections; provided, however, that Utility Service Providers subject to the Utilities Commission's March 19, 2020 Order shall remain subject to the terms of that order after this Executive Order expires. No interest or late fee shall be charged on arrearages. No provision in this Executive Order shall be construed as relieving a customer of their obligation to pay bills for receipt of any service covered by this Executive Order.
- D. **Reconnection of service.** A Utility Service Provider is encouraged to reconnect previously disconnected service to the extent practicable and waive any penalties or reconnection fees, and any policies or ordinances that prevent re-connection of disconnected customers are suspended.
- E. **Payment assistance.** NCDHHS and the North Carolina Department of Environmental Quality shall work with Utility Service Providers to publicize payment assistance programs to aid customers, particularly customers qualified for the Low Income Energy Assistance Program, in the payment of their utility bills.
- F. **Notification.** Utility Service Providers shall reasonably inform their customers of the applicable provisions contained in this Executive Order through the means those providers most typically use to communicate urgent messages to customers, such as print, email, SMS text message, Internet, and phone calls. Utility Service Providers shall maintain reasonable records that show the notifications provided under this Section of this Executive Order and to whom those notifications were delivered.
- G. **Duration.** This Section shall remain in effect for sixty (60) days, unless rescinded or superseded by another applicable Executive Order; provided, however, that after that date, the provisions of this Section shall continue to apply to arrearages that accumulated while this Executive Order was in effect.
- H. **Limitations on this Section**
1. This Section applies to all ordinary monthly (or other periodically-issued) charges for service to residential customer locations in North Carolina by all Utility Service Providers, whether for their customers' business or personal use.
 2. This Section does not apply to additional optional services ordered by customers above their usual periodic charges, including, by means of example, options or services that the customer added on or after the date of this Executive Order in addition to their normal services.
 3. This Section does not apply to issuance or collection of special fees or penalties issued to customers for unusual use, such as fines or penalties for improper disposal or charges for extraordinary discharges of wastewater.
- I. **Effect on regulations and ordinances.** The effect of any regulation, policy, or ordinance of a political subdivision or agency of the state inconsistent with this Section is hereby suspended.

- J. **Implementation and enforcement.** The undersigned directs that the North Carolina Utilities Commission monitor responses and provide assistance and guidance to Utility Service Providers, including to the extent possible Utility Service Providers not under the Commission's regulatory jurisdiction, in implementing the provisions of this Section of this Executive Order. Utility Service Providers shall report implementation information weekly to the North Carolina Utilities Commission, including the following: (1) number of accounts by type (e.g., residential or business account) for which service termination was forborne, (2) number of reconnections by type of account, (3) amount of late fees and other penalties not collected, (4) number of accounts on an extended repayment plan, (5) customer notification information, and any other information determined by the Utilities Commission. The Utilities Commission and the Attorney General shall have the authority to enforce the provisions of this Executive Order through any methods provided by current law. The Utilities Commission, and to the extent necessary for any Utility Service Providers not within the Utilities Commission's jurisdiction, the Attorney General may waive provisions in their discretion and order an effective alternative. The Commission shall provide a weekly report to the Governor's Office on implementation of this Executive Order.

Section 2. Guidance on Cable, Telecommunications, and Related Services

- A. Telecommunications, mobile telecommunications, cable, Internet, and wi-fi or wireless Internet service providers are urged to follow the guidelines outlined in Section 1 of this Executive Order, including the following measures:
1. Ceasing, for the duration of this State of Emergency, termination of customers' service for nonpayment; and
 2. Waiving any fee, charge, penalty, or interest for a late or otherwise untimely payment that has come due or becomes due during the State of Emergency; and
 3. Allowing customers to make reasonable payment arrangements to pay off, over at least a six (6) month period, any arrearages that accumulate during the effective period of this Executive Order, starting after the end of this State of Emergency; and
 4. Reconnect, to the extent feasible, practicable and appropriate, any customers who wish to be re-connected during the duration of this State of Emergency, with penalties and reconnection fees waived.
- B. In addition to the provisions included in this Section, all telecommunications service providers are urged to lift or greatly expand data caps where they have not done so already.
- C. The undersigned requests that the Attorney General convene cable, telecommunications, and related service providers in the state to identify specific and effective measures they can take individually and collectively to ensure that necessary services continue to be provided to people in the State of North Carolina to the maximum extent practicable.

Section 3. Guidance Concerning Eviction Proceedings

As guidance to North Carolinians, the undersigned highlights and explains the effect on evictions of the March 13, 2020 and March 19, 2020 orders by the Chief Justice of the North Carolina Supreme Court. The Attorney General has consulted with the undersigned on this Section of this Executive Order and joins in this guidance.

Pursuant to the Chief Justice's orders referenced above, there should be no new eviction proceedings until the orders expire. The current expiration date is April 17, 2020, unless extended by further order of the Chief Justice.

During this time period, there should also be no new rental bonds due.

The Clerks of Superior Court may, in their discretion, delay, until regular court operations resume, issuing Writs of Possession for Real Property, which are the legal documents under which sheriffs perform evictions. The undersigned and the Attorney General strongly encourage all Clerks of Superior Court to follow the spirit of the Chief Justice's order and to hold the issuance of all Writs of Possession of Real Property until April 17 or any later date subsequently ordered.

Further, the undersigned and the Attorney General strongly encourage sheriffs to delay, until regular court operations resume, the execution of any Writs of Possession for Real Property that have already been issued, consistent with the spirit of the order and in support of public health and public safety.

Finally, the undersigned and the Attorney General strongly encourage all property owners to work with tenants to the best of their abilities to implement payment plans and avoid evictions, in light of the State of Emergency in North Carolina, including cancelling pending evictions by notifying the relevant Sheriff's Office. Similarly, the undersigned and the Attorney General strongly encourage all lenders to work with property owners to the best of their abilities to provide loan payment flexibility that enables property owners to avoid evictions of tenants, in light of the State of Emergency in North Carolina.

Section 4. Assistance for Bank and Mortgage Companies' Customers

For the reasons and pursuant to the authority set forth above:

- A. The undersigned urges that all North Carolina-licensed or -regulated (i) banks, (ii) savings banks, (iii) savings and loan associations, (iv) trust companies, (v) mortgage-lenders, (vi) servicers, (vii) brokers and mortgage loan originators, (viii) consumer finance companies, (ix) check cashers, (x) money transmitters or prepaid card providers, (xi) tax refund anticipation loan facilitators, and (xii) credit unions operating in the State of North Carolina should immediately implement the following reasonable and prudent measures for individual and business customers who are North Carolina residents and can demonstrate financial hardship caused by COVID-19.
1. Waive overdraft fees.
 2. Extend new credit to creditworthy borrowers on lenient terms, subject to safety and soundness considerations.
 3. Waive late fees for credit card and other loan balances.
 4. Waive automated teller machine (ATM) fees.
 5. Increase daily ATM daily cash withdrawal limits.
 6. Increase credit card limits for creditworthy customers.
 7. Lower or waive fees on prepaid credit or debit cards.
 8. Waive early withdrawal penalties on time deposits.
 9. Offer payment accommodations, such as allowing loan customers to defer payments at no cost, extending the payment due dates or otherwise adjusting or altering terms of existing loans, which would avoid delinquencies, trigger events of default or similar adverse consequences.
 10. Cease reporting derogatory information (e.g., late payments, but not including forbearances) to credit reporting agencies for a period of ninety (90) days.

11. Ensure that customers do not experience a disruption of service if financial institutions close their physical offices. This may include shifting call centers to teleworking, making services available through Internet chat, or other electronic avenues for customers to continue to manage their accounts and to make inquiries.
 12. Alert customers to the heightened risk of scams and price gouging during the COVID-19 pandemic.
 13. Notify customers by various means, including but not limited to the entity's website, apps, and (if authorized by the customer) texts or emails, to explain the above-listed assistance being offered to customers.
- B. The undersigned urges that all entities covered by Subsection A of this Section that service mortgages ("mortgage servicing entities") shall voluntarily, but immediately take actions to alleviate the adverse impact caused by COVID-19 on those North Carolina resident mortgage borrowers ("mortgagors") who attest that they are not able to make timely payments. Mortgage servicing entities are urged to take the following reasonable and prudent actions to support those adversely impacted mortgagors:
1. Forbear mortgage payments for at least 180 days from their due dates and give mortgagors the option to extend loan terms by that number of days without a lump sum payment due at the end of the forbearance period.
 2. Refrain from reporting late payments to credit reporting agencies for at least 180 days.
 3. To the extent possible under existing law, offer mortgagors an additional ninety (90) day grace period to complete trial loan modifications, and ensure that late payments during the COVID-19 pandemic do not affect their ability to obtain permanent loan modifications.
 4. Waive late payment fees and any online or telephonic payment fees for a period of ninety (90) days.
 5. Postpone foreclosures and evictions for at least ninety (90) days.
 6. Notify customers by various means, including but not limited to the entity's website, apps, and (if authorized by the customer) texts or emails, to explain the above-listed assistance being offered to customers.

Section 5. Savings Clause

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 6. Distribution

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 7. Effective Date

This Executive Order is effective immediately. This Executive Order shall remain in effect for sixty (60) days unless rescinded or replaced with a superseding Executive Order. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 31st day of March in the year of our Lord two thousand and twenty.



Roy Cooper
Governor

ATTEST:



Rodney S. Maddox
Chief Deputy Secretary of State





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SHERIFF HUBERT A. PETERKIN
Hoke County

EMAIL TO: All Sheriffs
FROM: Eddie Caldwell
Executive Vice President and General Counsel
North Carolina Sheriffs' Association
SENT: March 20, 2020
SUBJECT: G.S. 42-36.2 - Execution on Writ for Possession of Property ---
Impact of the Coronavirus Pandemic

The Issue

G.S. § 42-36.2(a), regarding execution on a Writ for Possession of Property, provides that the sheriff **shall** execute the writ "no more than five days from the sheriff's receipt thereof" (emphasis added).

In consideration of the coronavirus pandemic, there have been discussions about whether or not a sheriff can voluntarily decide to not comply with this General Statute and not execute the writ within 5 days as required by the statute.

While everyone recognizes the predicament likely faced by tenants being evicted during the coronavirus pandemic, the landlord has followed proper legal process and has obtained from the court a Writ for Possession of Property. Therefore, the law of North Carolina requires that the sheriff **shall** execute the writ "no more than five days from the sheriff's receipt thereof" (emphasis added).

The Sheriff's Legal Obligation

We are not aware of and have not found any legal authority in the General Statutes or in case law that authorizes the sheriff to fail to follow this statute, nor any legal authority in the General Statutes or in case law that authorizes the sheriff to fail to follow any other General Statute.

The Landlord's Option to Stop Execution of the Writ for Possession of Property

The person who does have the authority to stop the execution of the Writ for Possession of Property in a summary ejection court case is the landlord. G.S. § 42-36.2(a)(2) provides that the sheriff shall remove the tenant's property within the 5 day time period **unless**: "the landlord, or his authorized agent, signs a statement saying that the landlord does not want to eject the tenant because the tenant has



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paid all court costs charged to him and has satisfied his indebtedness to the landlord.”

Upon receipt of such a statement from 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 such a statement, the clerk shall make an entry of satisfaction on the judgment docket.

The Governor's Executive Orders

We are not aware of and have not found any legal authority for the Governor to authorize or direct a sheriff to fail to follow this statute. No such authority is contained in the recent Governor's Executive Orders No. 117 and No. 118. Also, no such authority can be found in the General Statutes that authorize issuance of the Governor's Executive Orders.

The Order of the Chief Justice of the Supreme Court of North Carolina

On March 19, 2020, the Chief Justice entered an Order that provides, in pertinent part:

Extension of Time and Periods of Limitation Pursuant to N.C.G.S. § 7A-39(b)(1)

I order that all pleadings, motions, notices, and other documents and papers that were or are due to be filed in any county of this state on or after 16 March 2020 and before the close of business on 17 April 2020 in civil actions, criminal actions, estates, and special proceedings shall be deemed to be timely filed if they are filed before the close of business on 17 April 2020.

I further order that all other acts that were or are due to be done in any county of this state on or after 16 March 2020 and before the close of business on 17 April 2020 in civil actions, criminal actions, estates, and special proceedings shall be deemed to be timely done if they are done before the close of business on 17 April 2020.

After much thoughtful analysis and discussion among Association attorneys and several sheriffs' office legal advisors, two different reasonable interpretations of the Chief Justice's Order have been identified. Since there is no legal process or mechanism for us to clarify the intent or determine the correct scope of the Chief Justice's Order, **both potential interpretations are attached at the end of this message**. Either of them, or neither of them, may ultimately be determined by our courts to be a correct interpretation of the Chief Justice's Order. We are sharing this email with the staff of Governor Cooper and Chief Justice Beasley so they are aware of the various interpretations.

Trial Court Judges

Although nothing has been documented in writing, some sheriffs have advised that they asked their local trial court judges if the judges could or would enter an Order authorizing the sheriff to not comply with the requirement in G.S. § 42-36.2(a), regarding execution on a Writ for Possession of Property, that provides that the sheriff shall execute the writ “no more than five days from the sheriff's receipt thereof (emphasis added). Those sheriffs report that their judges advised that neither the judge nor the sheriff had any authority to authorize non-compliance with the mandatory provision of the statute.

Accountability of the Sheriff

G.S. § 162-8 provides that a sheriff must furnish a bond. A claim could be filed against the sheriff's bond for the sheriff's failure to make "the due execution and return of process, the payment of fees and moneys collected, and the faithful execution of his office as sheriff."

G.S. § 128-16 provides that the sheriff "shall be removed from office by the judge of the superior court, resident in or holding the courts of the district where said officer is resident upon charges made in writing, and hearing thereunder, for the following causes:

- (1) For willful or habitual neglect or refusal to perform the duties of his office.
- (2) For willful misconduct or maladministration in office."

An action to remove the sheriff "may be filed upon the relation of any five qualified electors of the county in which the person charged is an officer, upon the approval of the county attorney of such county, or the district attorney of the district, or by any such officer upon his own motion. It shall be the duty of the county attorney or district attorney to appear and prosecute this proceeding." G.S. § 128-17.

How an action under this statute might end up and how the Chief Justice's order could impact any such hearing is unknown at this point. Therefore, as is always the case where the actions of a sheriff could be viewed as failing to perform a duty mandated by our General Statutes, we recommend you consult with your own legal advisor or county attorney prior to making the decision to stop executing Writs for Possession of Property that have been ordered by the courts.

Alternative Interpretation A

It has been suggested that the part of the Chief Justice's Order, in the second paragraph, that provides that "all other acts....shall be deemed to be timely done if they are done before the close of business on 17 April 2020" should be interpreted to mean that sheriffs do not have to comply with the 5 day deadline clearly specified in G.S. § 42-36.2 for execution of a Writ for Possession of Property.

This order was issued pursuant to G.S. § 7A-39(b)(1), which states in pertinent part: "the Chief Justice may by order entered pursuant to this subsection extendthe time period or period of limitation within which pleadings, motions, notices, and other documents and papers may be timely filed and other acts may be timely done in civil actions, criminal actions, estates, and special proceedings...."

If G.S. § 7A-39(b)(1) could, by this Order, extend the time period for execution on all Writs for Possession of Property until April 17, 2020, then it must be concluded that this Order also extended the time period and deadlines until April 17, 2020 for the following additional mandatory actions:

1. --- Mandatory domestic violence arrests would be extended from being immediate until April 17, 2020. G.S. § 50B-4.1(b) --- A law enforcement officer shall arrest and take a person into custody, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated a valid protective order excluding the person from the residence or household occupied by a victim of

- domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. § 50B-3(a)(9).
2. --- An arrested domestic violence defendant would be held in custody, instead of a maximum of 48 hours, until April 17, 2020. G.S. § 15A-534.1(b). A defendant may be retained in custody not more than 48 hours from the time of arrest without a determination being made under this section by a judge. If a judge has not acted pursuant to this section within 48 hours of arrest, the magistrate shall act under the provisions of this section.
 3. --- Instead of being held within 96 hours of arrest, the first appearance for arrested defendants would be continued until April 17, 2020. G.S. § 15A-601(c). Unless the defendant is released pursuant to Article 26 of this Chapter, Bail, first appearance before a district court judge must be held within 96 hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first.
 4. --- Instead of a law enforcement officer taking an arrested defendant for an Initial Appearance before a magistrate “without unnecessary delay,” the officer would not have to take the defendant for an Initial Appearance until April 17, 2020. G.S. § 15A-511(a) (1). A law-enforcement officer making an arrest with or without a warrant must take the arrested person without unnecessary delay before a magistrate as provided in G.S. § 15A-501.
 5. --- For Involuntary Commitment (IVC) respondents, instead of an officer taking the respondent for a First Examination “without unnecessary delay,” the officer would have until April 17, 2020 to do so. G.S. § 122C-263(a). Without unnecessary delay after assuming custody, the law enforcement officer or the individual designated or required to provide transportation pursuant to G.S. § 122C-251(g) shall take the respondent to a facility or other location identified by the LME/MCO in the community crisis services plan adopted pursuant to G.S. § 122C-202.2 that has an available commitment examiner and is capable of performing a first examination in conjunction with a health screening at the same location, unless circumstances indicate the respondent appears to be suffering a medical emergency in which case the law enforcement officer will seek immediate medical assistance for the respondent.
 6. --- For Involuntary Commitment (IVC) respondents, instead of the respondent getting a physician’s examination within 24 hours of arrival at a 24-hour facility, the examination would be delayed until April 17, 2020. G.S. § 122C-266(a). Except as provided in subsections (b) and (e), within 24 hours of arrival at a 24-hour facility described in G.S. § 122C-252, the respondent shall be examined by a physician.

There are numerous other General Statutes with similar deadlines. It seems unlikely that the Chief Justice’s Order would be intended to or be found to extend all of the above deadlines and all other deadlines in the General Statutes to April 17, 2020. And, if the Chief Justice’s Order was intended to do so, undoubtedly the Order could have precisely said so and left nothing to interpretation or speculation.

Alternative Interpretation B

Authority of the Chief Justice

The General Assembly, in G.S. § 42-36.2, has set the deadline by which the sheriff shall execute on a valid Writ for Possession of Property as five (5) days. While the Chief Justice has no direct authority to overrule the General Assembly as to a matter of statutory law, it is also possible to interpret that the General Assembly has delegated, in times of emergency, authority to the Chief Justice under G.S. § 7A-39(b)(1) to issue orders, such as the Order issued on March 19, to suspend compliance with deadlines imposed by the statutes as to processes which fall under the authority of the Courts.

Effect of the Order

The Order only has to do with timing. It does not otherwise relieve a sheriff from any of his/her duties and responsibilities, nor does it abrogate the sheriff's responsibilities upon expiration of the Order's covered time. The Chief Justice's Order very-nearly mirrors the language as to what is allowed under Her Honor's statutory authority in G.S. § 7A-39(b)(1). Her Honor's Order indicates that it intends to cover all "*acts that were or are due to be done.*" In essence, one interpretation is that the Order is setting a new due date for legal acts required under law.

Does the Order apply to the execution of a Writ for Possession of Property?

Breaking down the language, it certainly may. Here's why:

- A. The summary ejectment process contained in G.S. § 42 is very clearly a "*civil action.*"
- B. The next question is whether the execution by the sheriff of a Writ for Possession of Property is incorporated within the "*other acts*" referenced in the Chief Justice's Order. The phrase "other acts" does not appear to be a term of art, as it is not defined in Chapter 7A (which outlines the role of the Judicial Branch), it appears nowhere in the NC Rules of Civil Procedure, nor is it defined in the Criminal Procedure Act. Based on this, we must give those words the best interpretation possible based on their plain meaning. Based on the plain meaning of the term "*other acts,*" in the context of the judicial function, it is reasonable to interpret that one such "act" would be the sheriff's execution of a Writ for Possession of Property as required under G.S. § 42-36.2.

Sheriff as an Officer of the Courts

How does this apply to sheriffs? Under G.S. § 162-14, the sheriff has a duty to execute civil processes and "*make due return*" of those processes. When the sheriff serves a Writ for Possession of Property, he/she is acting as an officer of the court in advancing the interests of a civil plaintiff in possession of real property. This duty is one which the sheriff alone can perform and the Chief Justice's Order in no way alleviates the sheriff from his/her obligation to perform that duty. Instead, the Order can be interpreted to allow the sheriff additional time in which to have performed that duty in a timely fashion. So, rather than five (5) days, the sheriff would have until April 17 to execute on the writ of possession and still be within the time allowed by G.S. § 42-36.2 to have validly executed the writ of possession.

The Chief Justice's Order is not a mandate

The Chief Justice's Order can be interpreted as to allow the sheriff discretion as to when "due to be done" may occur... which, in this case, is no later than April 17. This interpretation does not mean that Writs for Possession of Property received between now and April 17 are invalid in any

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way. Nothing in the Chief Justice's Order would seem to prevent a sheriff from doing "business as usual." If a writ is received that otherwise appears to be valid for service, it can certainly be served, as normal, within the guidelines of the statutes. What the Order may apparently give to sheriffs is the ability to use some discretion in deciding, on a case-by-case basis, whether or not the writs should be served on the normal schedule, or perhaps delayed for service until closer to April 17 based on the health crisis we are facing statewide. At this point, without any further Orders from the Chief Justice, it appears that April 17 is a hard deadline. This may mean that if a sheriff were to delay service based on this Order, Writs for Possession of Property may need to begin being served in advance of the April 17 deadline to avoid having to serve a great number on one day.

As always, if you have any questions or need any additional information, please call me at 919-459-1052.

Thanks....Eddie C.



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