

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1291  
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Short Title: Probate Code Amendments.

(Public)

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Sponsors: Representative B. Ethridge.

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Referred to: Judiciary.

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April 12, 1989

A BILL TO BE ENTITLED

AN ACT CONCERNING COLLECTION OF PROPERTY BY AFFIDAVIT WHEN A  
DECEDENT DIES TESTATE, AND CONCERNING DISBURSEMENT AND  
DISTRIBUTION OF PROPERTY COLLECTED BY AFFIDAVIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-25-1.1(a) reads as rewritten:

"(a) When a decedent dies testate leaving personal property, less liens and encumbrances thereon, not exceeding ten thousand dollars (\$10,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be an heir, executor named in the will of the decedent, or creditor, of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir, executor named in the will of the decedent, or creditor, stating:

- (1) The name and address of the affiant and the fact that he is an heir, executor named in the will of the decedent, or creditor, of the decedent;
- (2) The name of the decedent and his residence at time of death;
- (3) The date and place of death of the decedent;
- (4) That 30 days have elapsed since the death of the decedent;

- 1 (5) That the decedent died testate leaving personal property, less liens and  
2 encumbrances thereon, not exceeding ten thousand dollars (\$10,000)  
3 in value;
- 4 (6) That the decedent's will has been admitted to probate in the court of  
5 the proper county and a duly certified copy of the will has been  
6 recorded in each county in which is located any real property owned  
7 by the decedent at the time of his death;
- 8 (7) That a certified copy of the decedent's will is attached to the affidavit;
- 9 (8) That no application or petition for appointment of a personal  
10 representative is pending or has been granted in any jurisdiction;
- 11 (9) The names and addresses of those persons who are entitled, under the  
12 provisions of the will or of the Intestate Succession Act, to the  
13 property of the decedent; and their relationship, if any, to the decedent;  
14 and
- 15 (10) A description sufficient to identify each tract of real property owned  
16 by the decedent at the time of his death."

17 Sec. 2. G.S. 28A-25-3(a) reads as rewritten:

18 "(a) If there has been no personal representative or collector appointed by the  
19 clerk of superior court, the heir, executor named in the will of the decedent, or creditor  
20 who has collected personal property of the decedent by affidavit pursuant to G.S. 28A-  
21 25-1 or G.S. 28A-25-1.1 shall:

- 22 (1) Disburse and distribute the same in the following order:
- 23 a. To the payment of the surviving spouse's year's allowance and  
24 the children's year's allowance assigned in accordance with G.S.  
25 30-15 through 30-33;
- 26 b. To the payment of the debts and claims against the estate of the  
27 decedent in the order of priority set forth in G.S. 28A-19-6, or  
28 to the reimbursement of any person who has already made  
29 payment thereof;
- 30 c. To the distribution of the remainder of the personal property to  
31 the persons entitled thereto under the provisions of the will or of  
32 the Intestate Succession Act; and
- 33 (2) File an affidavit with the clerk of superior court that he has collected  
34 the personal property of the decedent and the manner in which he has  
35 disbursed and distributed it. This final affidavit shall be filed within 90  
36 days of the date of filing of the qualifying affidavit provided for in  
37 G.S. 28A-25-1 or G.S. 28A-25-1.1. If the heir, executor named in the  
38 will of the decedent, or creditor cannot file the final affidavit within 90  
39 days, he shall file a report with the clerk within that time period stating  
40 his reasons. Upon determining that the heir, executor named in the will  
41 of the decedent, or creditor has good reason not to file the final  
42 affidavit within 90 days, the clerk may extend the time for filing up to  
43 one year from the date of filing the qualifying affidavit."

44 Sec. 3. This act shall become effective October 1, 1989.