

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 889

Short Title: Estate/Property Collection.

(Public)

Sponsors: Senator Daniel.

Referred to: Judiciary III

April 17, 1989

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR COLLECTION OF PROPERTY IN DECEDENTS' ESTATES BY DEVISEES AND PUBLIC ADMINISTRATORS.

The General Assembly of North Carolina enacts:

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

"(a) When a decedent dies intestate 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 or creditor of the decedent, not disqualified under G.S. 28A-4-2, or the public administrator appointed pursuant to G.S. 28A-12-1, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir or creditor or the public administrator stating:

- (1) The name and address of the affiant and the fact that he or she is an heir or creditor of the ~~decedent;~~ decedent or public administrator;
- (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;
- (5) That the value of all the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed ten thousand dollars (\$10,000);

- 1 (6) That no application or petition for appointment of a personal
2 representative is pending or has been granted in any jurisdiction;
3 (7) The names and addresses of those persons who are entitled, under the
4 provisions of the Intestate Succession Act, to the personal property of
5 the decedent and their relationship, if any, to the decedent; and
6 (8) A description sufficient to identify each tract of real property owned
7 by the decedent at the time of his death."

8 Sec. 2. G.S. 28A-25-1.1(a) reads as rewritten:

9 "(a) When a decedent dies testate leaving personal property, less liens
10 and encumbrances thereon, not exceeding ten thousand dollars (\$10,000) in value, at
11 any time after 30 days from the date of death, any person indebted to the decedent or
12 having possession of tangible personal property or an instrument evidencing a debt,
13 obligation, stock or chose in action belonging to the decedent shall make payment of the
14 indebtedness or deliver the tangible personal property or an instrument evidencing a
15 debt, obligation, stock or chose in action to a person claiming to be ~~an~~ a devisee, heir or
16 creditor, of the decedent, not disqualified under G.S. 28A-4-2, or the public
17 administrator appointed pursuant to G.S. 28A-12-1, upon being presented a certified
18 copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of
19 the heir or ~~creditor~~, creditor or the public administrator, stating:

- 20 (1) The name and address of the affiant and the fact that he is ~~an~~ a devisee,
21 heir or creditor, of the ~~decedent~~, decedent or the public administrator;
22 (2) The name of the decedent and his residence at time of death;
23 (3) The date and place of death of the decedent;
24 (4) That 30 days have elapsed since the death of the decedent;
25 (5) That the decedent died testate leaving personal property, less liens and
26 encumbrances thereon, not exceeding ten thousand dollars (\$10,000)
27 in value;
28 (6) That the decedent's will has been admitted to probate in the court of
29 the proper county and a duly certified copy of the will has been
30 recorded in each county in which is located any real property owned
31 by the decedent at the time of his death;
32 (7) That a certified copy of the decedent's will is attached to the affidavit;
33 (8) That no application or petition for appointment of a personal
34 representative is pending or has been granted in any jurisdiction;
35 (9) The names and addresses of those persons who are entitled, under the
36 provisions of the ~~will~~ will, or if applicable, of the Intestate Succession
37 Act, to the property of the decedent; and their relationship, if any, to
38 the decedent; and
39 (10) A description sufficient to identify each tract of real property owned
40 by the decedent at the time of his death."

41 Sec. 3. G.S. 28A-25-3 reads as rewritten:

42 "**§ 28A-25-3. Disbursement and distribution of property collected by affidavit.**

1 (a) If there has been no personal representative or collector appointed by the
2 clerk of superior court, the ~~heir [or] creditor-affiant~~ who has collected personal property
3 of the decedent by affidavit pursuant to G.S. 28A-25-1 or G.S. 28A-25-1.1 shall:

4 (1) Disburse and distribute the same in the following order:

5 a. To the payment of the surviving spouse's year's allowance and
6 the children's year's allowance assigned in accordance with G.S.
7 30-15 through 30-33;

8 b. To the payment of the debts and claims against the estate of the
9 decedent in the order of priority set forth in G.S. 28A-19-6, or
10 to the reimbursement of any person who has already made
11 payment thereof;

12 c. To the distribution of the remainder of the personal property to
13 the persons entitled thereto under the provisions of the will or of
14 the Intestate Succession Act; and

15 (2) File an affidavit with the clerk of superior court that he has collected
16 the personal property of the decedent and the manner in which he has
17 disbursed and distributed it. This final affidavit shall be filed within 90
18 days of the date of filing of the qualifying affidavit provided for in
19 G.S. 28A-25-1 or G.S. 28A-25-1.1. If the ~~heir or creditor-affiant~~ cannot
20 file the final affidavit within 90 days, he shall file a report with the
21 clerk within that time period stating his reasons. Upon determining that
22 the ~~heir or creditor-affiant~~ has good reason not to file the final affidavit
23 within 90 days, the clerk may extend the time for filing up to one year
24 from the date of filing the qualifying affidavit.

25 (b) Nothing in this section shall be construed as changing the rule of G.S. 28A-
26 15-1 and G.S. 28A-15-5 rendering both real and personal property, without preference
27 or priority, available for the discharge of debts and other claims against the estate of the
28 decedent. If it appears that it may be in the best interest of the estate to sell, lease, or
29 mortgage any real property to obtain money for the payment of debts or other claims
30 against the decedent's estate, the affiant shall petition the clerk of superior court for the
31 appointment of a personal representative to conclude the administration of the
32 decedent's estate pursuant to G.S. 28A-25-5."

33 Sec. 4. G.S. 28A-25-4 reads as rewritten:

34 **"§ 28A-25-4. Clerk may compel compliance.**

35 If any ~~heir or creditor-affiant~~ who has collected personal property of the decedent by
36 affidavit pursuant to G.S. 28A-25-1 or G.S. 28A-25-1.1 shall fail to make distribution or
37 file affidavit as required by G.S. 28A-25-3, the clerk of superior court may, upon his
38 own motion or at the request of any interested person, issue an attachment against him
39 for a contempt and commit him until he makes proper distribution and files the
40 affidavit. In addition to or in lieu of filing this attachment, the clerk may require the ~~heir~~
41 ~~or creditor-affiant~~ to post a bond conditioned as provided in G.S. 28A-8-2."

42 Sec. 5. This act is effective upon ratification.