

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 244

Judiciary I/Constitution Committee Substitute Adopted 4/13/95

Short Title: Simplified Estate Administration.

(Public)

Sponsors:

Referred to:

February 22, 1995

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE SUMMARY ADMINISTRATION OF AN ESTATE WHERE A SURVIVING SPOUSE IS THE SOLE BENEFICIARY OF THE ESTATE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 28A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 28.

"SUMMARY ADMINISTRATION.

"§ 28A-28-1. Summary administration where spouse is sole beneficiary.

When a decedent dies testate or intestate leaving a surviving spouse as the sole devisee or heir, the surviving spouse may file a petition for summary administration with the clerk of superior court of the county where the decedent was domiciled at the time of death. This procedure is available if the decedent died partially testate, provided that the surviving spouse is the sole devisee under the will and the sole heir of the decedent's intestate property. This procedure is not available if the decedent's will provides that it is not available or if the devise to the surviving spouse is in trust rather than outright.

"§ 28A-28-2. Petition.

1 (a) The petition shall be signed by the surviving spouse and verified to be accurate
2 and complete to the best of the spouse's knowledge and belief and shall state as follows:

3 (1) The name and address of the spouse and the fact that he or she is the
4 surviving spouse of the decedent;

5 (2) The name and domicile of the decedent at the time of death;

6 (3) The date and place of death of the decedent;

7 (4) The date and place of marriage of the spouse and the decedent;

8 (5) A description sufficient to identify each tract of real property owned in
9 whole or in part by the decedent at the time of death;

10 (6) A description of the nature of the decedent's personal property and the
11 location of such property, as far as these facts are known or can with
12 reasonable diligence be ascertained;

13 (7) The probable value of the decedent's personal property, so far as the
14 value is known or can with reasonable diligence be ascertained;

15 (8) That no application or petition for appointment of a personal
16 representative is pending or has been granted in this State;

17 (9) That the spouse is the sole devisee or sole heir, or both, of the decedent,
18 and that there is no other devisee or heir; that the decedent's will, if any,
19 does not prohibit summary administration; and that any property
20 passing to the spouse under the will is not in trust;

21 (10) The name and address of any executor or coexecutor named by the will
22 and that, if the decedent died testate, a copy of the petition has been
23 personally delivered or sent by first-class mail to the last known address
24 of any executor or coexecutor named by the will, if different from the
25 spouse;

26 (11) That, to the extent of the value of the property received by the spouse
27 under the will of the decedent or by intestate succession, the spouse
28 assumes all liabilities of the decedent that were not discharged by reason
29 of death and assumes liability for all taxes and valid claims against the
30 decedent or the estate, as provided in G.S. 28A-28-6; and

31 (12) If the decedent died testate, that the decedent's will has been admitted to
32 probate in the court of the proper county; that a duly certified copy of
33 the will has been recorded in each county in which is located any real
34 property owned by the decedent at the time of death; and that a certified
35 copy of the decedent's will is attached to the petition.

36 (b) The petition shall be filed by the clerk upon payment of the fee provided in
37 G.S. 7A-307 and shall be indexed in the index to estates.

38 (c) If the decedent died testate, the surviving spouse shall serve a copy of the
39 petition in accordance with the Rules of Civil Procedure on any executor or coexecutor
40 nominated in the decedent's last will, if different from the spouse.

41 **"§ 28A-28-3. Clerk's order.**

42 If it appears to the clerk that the petition and supporting evidence, if any, comply with
43 the requirements of G.S. 28A-28-2 and on the basis thereof the spouse is entitled to

1 summary administration, the clerk shall enter an order to that effect and no further
2 administration of the estate is necessary. Nothing in this section shall preclude a petition
3 under the provisions of G.S. 28A-28-7(a) or the appointment of a personal representative
4 or a collector under the provisions of Article 6 or Article 11 of this Chapter.

5 **"§ 28A-28-4. Effect of order.**

6 (a) The presentation of a certified copy of the order described in G.S. 28A-28-3
7 shall be sufficient to require the transfer to the spouse of any property or contract right
8 owned by the decedent at the time of death, including but not limited to: (i) wages and
9 salary; (ii) the title and license to a motor vehicle registered in the name of the decedent
10 owner; (iii) the ownership rights of a savings account, checking account, or certificate of
11 deposit in a bank in the name of the decedent owner; (iv) the ownership rights of a
12 savings account, share certificate, or certificate of deposit in a credit union, building and
13 loan association, or savings and loan association in the name of the decedent owner; and
14 (v) the ownership rights in any stock or security registered on the books of a corporation
15 in the name of the decedent owner.

16 (b) After the entry of the order described in G.S. 28A-28-3, the spouse may
17 convey, lease, sell, or mortgage any real property devised to or inherited by the spouse
18 from the decedent, at public or private sale, upon such terms as the spouse may
19 determine. This section shall not limit any other powers the spouse may have over
20 property devised to or inherited by the spouse from the decedent. The provisions of G.S.
21 28A-17-12 are not applicable to a conveyance, sale, lease, or mortgage under this
22 subsection.

23 **"§ 28A-28-5. Effect of payment.**

24 The person paying, delivering, transferring, or issuing property or the evidence
25 thereof pursuant to the order described in G.S. 28A-28-3 is discharged and released to the
26 same extent as if the person dealt with a duly qualified personal representative of the
27 decedent. The person is not required to see to the application of the property or evidence
28 thereof or to inquire into the truth of any statement in the petition or order.

29 If any person to whom the order is presented refuses to pay, deliver, transfer, or issue
30 any property or evidence thereof, the property may be recovered or its payment, delivery,
31 transfer, or issuance may be compelled in an action brought for that purpose by the
32 surviving spouse. The court costs and attorney's fee incident to the action shall be taxed
33 against the person whose refusal to comply with the provisions of G.S. 28A-28-4 made
34 the action necessary.

35 **"§ 28A-28-6. Spouse's assumption of liabilities.**

36 If the clerk grants the order for summary administration, the spouse shall be deemed
37 to have assumed, to the extent of the value of the property received by the spouse under
38 the will of the decedent or by intestate succession, all liabilities of the decedent that were
39 not discharged by reason of death and liability for all taxes and valid claims against the
40 decedent or the estate. The value of the property is the fair market value of the property
41 on the date of death of the decedent less any liens or encumbrances on the property so
42 received. The spouse may assert any defense, counterclaim, cross-claim, or setoff which
43 would have been available to the decedent if the decedent had not died except for actions

1 listed in G.S. 28A-18-1(b). A spouse shall not be deemed to have assumed any liabilities
2 of the decedent that were discharged by reason of death.

3 **"§ 28A-28-7. Right to petition for appointment of personal representative;
4 discharge of spouse's liability.**

5 (a) Nothing in this Article shall preclude any person qualified to serve as personal
6 representative pursuant to G.S. 28A-4-1, including the surviving spouse, from petitioning
7 the clerk of superior court for the appointment of a personal representative or collector to
8 administer the decedent's estate. If a personal representative or collector is appointed, the
9 spouse shall render a proper accounting to the personal representative or collector and file
10 a copy of the accounting with the clerk. The spouse shall deliver assets of the decedent's
11 estate, cash, or other property and shall be discharged of liability in accordance with the
12 provisions of subsection (b) of this section.

13 (b) In the event that a personal representative or collector is appointed, the spouse
14 shall be discharged of liability for the debts of the decedent as follows:

15 (1) If the spouse delivers to the personal representative or collector all of
16 the property received by the spouse in the identical form that it was
17 received by the spouse, then the spouse will be discharged of all
18 liability.

19 (2) If the spouse does not deliver to the personal representative or collector
20 all of the property in the identical form that it was received by the
21 spouse, then the spouse shall be discharged of liability as follows:

22 a. For property delivered to the personal representative or collector
23 that is in the identical form that it was received by the spouse, the
24 spouse is discharged to the extent of the fair market value of the
25 property at the time of the decedent's death or the fair market
26 value at the time the property was received by the personal
27 representative or collector, whichever is greater.

28 b. For property delivered to the personal representative or collector
29 that is not in the identical form that it was received by the spouse,
30 the spouse is discharged to the extent of the fair market value of
31 such property at the time it was delivered to the personal
32 representative or collector."

33 Sec. 2. This act becomes effective January 1, 1996, and shall apply to the
34 estates of decedents dying on or after that date.