

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2009-131
SENATE BILL 724

AN ACT TO ALLOW FOR CERTAIN PAYMENTS OF AN ESTATE WHILE A CAVEAT
IS PENDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 31-36 reads as rewritten:

"§ 31-36. ~~Caveat suspends proceedings under will.~~ Effect of caveat on estate administration.

(a) Order of Clerk. – Where a caveat is entered and bond given, the clerk of the superior court shall forthwith issue an order that shall apply during the pendency of the caveat to any personal representative, having the estate in charge, ~~to suspend all further proceedings in relation to the estate, except the preservation of the property and the collection of debts and payment of all taxes and debts that are a lien upon the property of the decedent, as may be allowed by order of the clerk of the superior court, until a decision of the issue is had as follows:~~

- (1) Distributions to beneficiaries. – That there shall be no distributions of assets of the estate to any beneficiary;
- (2) Commissions. – That no commissions shall be advanced or awarded to any personal representative;
- (3) Accountings. – That the personal representative shall file all accountings required by the clerk of superior court and that the personal representative may pay any applicable filing fees associated with those accountings from the assets of the estate;
- (4) Preservation of estate assets. – That the personal representative shall preserve the property of the estate and that the personal representative is authorized to pursue and prosecute claims that the estate may have against others; and
- (5) Taxes, claims and debts of estate. – That the personal representative may file all appropriate tax returns and that the personal representative may pay, in accordance with the procedures of subsection (b) of this section: taxes; funeral expenses of the decedent; debts that are a lien upon the property of the decedent; bills of the decedent accrued before death; claims against the estate that are timely filed; professional fees related to administration of the estate, including fees for tax return preparation, appraisal fees, and attorneys' fees for estate administration.

(b) Procedures. – In regard to payment of any of the items listed in subdivision (5) of subsection (a) of this section, the personal representative shall file with the clerk a notice of the personal representative's intent to pay those items and shall serve the notice upon all parties to the caveat, pursuant to Rule 4 of the Rules of Civil Procedure. If within 10 days of service any party files with the clerk a written objection to that payment, the clerk shall schedule a hearing and determine whether the proposed payment shall be made. If no such objection is filed with the clerk, the clerk may approve the payment without hearing, and upon that approval, the personal representative may make the payment. The parties to the caveat may consent to any such payment, and upon such consent, the clerk may approve the payment without hearing. The clerk may defer ruling on the payment pending the resolution of the caveat.

(c) Preservation of Estate Assets. – Questions regarding the use, location, and disposition of assets that cannot be resolved by the parties and consented to by the clerk shall be decided by the clerk. When a question has not been resolved by agreement, either party may request a hearing before the clerk upon 10 days notice and shall serve the notice upon all



parties to the caveat, pursuant to Rule 4 of the Rules of Civil Procedure. Decisions of the clerk may be appealed to the superior court."

SECTION 2. This act becomes effective October 1, 2009, and applies to estates of decedents dying on or after that date.

In the General Assembly read three times and ratified this the 9th day of June, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 11:42 a.m. this 19th day of June, 2009