

## **Chapter 28B.**

### **Estates of Absentees in Military Service.**

#### **§ 28B-1. Absentee in military service; definition.**

Any person serving in or with the Armed Forces of the United States, in or with the Red Cross, in or with the United States Merchant Marine, during any time when a state of hostilities exists between the United States and any other power, who has been reported or listed by the appropriate federal agency as missing in action or as a prisoner of war for a period of one year, shall be an "absentee in military service" within the meaning of this Chapter. (1973, c. 522, s. 1; 2011-183, s. 25.)

#### **§ 28B-2. Action for receiver; jurisdiction; contents of complaint.**

(a) Whenever any absentee in military action as defined in this Chapter has an interest in any form of property in this State and has not provided an adequate power of attorney authorizing another to act in his behalf in regard to such property or interest, any person who would have an interest in the property or estate of the absentee in military service were such absentee in military service deceased, or any person who is dependent on such absentee in military service for his maintenance or support, may commence an action for the appointment of a receiver to care for the estate of the absentee in military service by filing a verified complaint in the superior court in the county of domicile of the absentee in military service or in any county where his property is situated.

(b) The complaint shall show the following:

- (1) The name, age, address, relationship of the person filing the complaint to the alleged absentee, and the interest of that person in the property of the absentee in military service or his dependency upon the absentee in military service for his maintenance and support.
- (2) The name, age, and address of all persons who would have an interest in the estate of the absentee in military service were he deceased and the name, age, and address of all persons dependent upon him for their maintenance and support.
- (3) The name, age, and last known address of the absentee in military service.
- (4) The date on which the absentee in military service was first reported as missing or captured by the appropriate federal agency, and, as far as is known, the circumstances surrounding his absence.
- (5) The necessity for and the reasons why a receiver should be appointed.
- (6) Whether or not the person alleged to be an absentee in military service has a will and the whereabouts of said will.
- (7) So far as known, a schedule of all his property within this State, including property in which he is co-owner with or without the right of survivorship. (1973, c. 522, s. 2.)

#### **§ 28B-3. Notice; hearing; guardian ad litem.**

(a) Notice of the hearing on the complaint to appoint a receiver shall be given to all persons named in the petition by registered mail or certified mail with return receipt requested.

(b) The judge shall hear evidence on the questions of whether the person alleged to be missing or captured is an absentee in military service as defined by G.S. 28B-1, on the question of

the necessity for the appointment of a receiver, and on the question of who is entitled to appointment as the receiver.

(c) The court may in its discretion appoint a guardian ad litem to represent the alleged absentee in military service at the hearing. (1973, c. 522, s. 3.)

#### **§ 28B-4. Order of appointment.**

(a) If after the hearing, the court is satisfied that said person is, in fact, an absentee in military service as defined in G.S. 28B-1 and that it is necessary that a receiver be appointed, he shall appoint a receiver of the estate and property of said absentee in military service under the supervision and subject to the further orders of the court.

(b) In the appointment of a receiver, the court shall give due consideration to the appointment of the spouse or one of the next of kin of the absentee in military service if such spouse or next of kin is a fit and proper person and is qualified to act. (1973, c. 522, s. 4.)

#### **§ 28B-5. Bond; inventory; accounting.**

(a) Before receiving any property the judge shall require the receiver to qualify by giving bond in an amount and with surety approved by him.

(b) Within 30 days after the date of his appointment, the receiver shall file an inventory of all of the property of the absentee in military service taken in charge. Every year thereafter, within 30 days of the anniversary date of his appointment the receiver shall file a full and complete inventory and accounting with the clerk of superior court under oath, of the amount of property received by him, or invested by him, and the manner and nature of such investment, and his receipts and disbursements for the past year in the form of debit and credit. The clerk shall inspect and audit the inventory and accounting and if he approves the same he shall endorse his approval thereon, which shall be deemed prima facie evidence of correctness. If the clerk finds evidence of misconduct or default on the part of the receiver he shall report the same to the court. In such event, the procedures found in G.S. 28B-7(b) shall be followed. (1973, c. 522, s. 5.)

#### **§ 28B-6. Powers and duties of receiver.**

(a) Under the direction of a judge, the receiver shall administer the property of the absentee in military service as an equity receivership with the following powers:

- (1) To take custody and control of all property of the absentee in military service wherever situated.
- (2) To collect all debts due to the absentee in military service and pay all debts owed by him.
- (3) To bring and defend suits.
- (4) To pay insurance premiums.
- (5) With the approval of the judge in each instance, to continue to operate and manage any business enterprise, farm or farming operations, and to make necessary contracts with reference thereto.
- (6) With the approval of the judge in each instance, to renew notes and other obligations, obtain loans on life insurance policies, and pledge or mortgage property for loans necessary in carrying on or liquidating the affairs of such absentee in military service.
- (7) With the approval of the judge in each instance, to institute proceedings to partition property owned by the absentee and another as joint tenants or tenants

in common, with or without the right of survivorship; provided, in the case of property owned by the absentee in military service and spouse as tenants by the entirety, such proceedings may be instituted only if the spouse of the absentee in military service consents in writing to the partitioning, and, in the event of partitioning, one half of the property or proceeds shall belong to the spouse and one half shall belong to the receiver as property of the absentee in military service.

- (8) With the approval of the judge in each instance, to sell, lease, invest, and reinvest any or all property, its income, or its proceeds.
- (9) To pay over or apply the proceeds of mortgage and sales of such portion, or all of the property or the income thereof, as may be necessary for the maintenance and support of the dependents of the absentee in military service. If the income from the property of the absentee in military service is not sufficient to pay all of his debts and to provide for the maintenance and support of his dependents, the receiver may apply to the judge for an order to sell or mortgage so much of the real or personal property as may be necessary therefor. Such sale or mortgage shall be reported to the judge, and if approved and confirmed by the judge, the receiver shall execute the required conveyances or mortgages of such property to the purchaser or lender upon his complying with the terms of sale or mortgage.

(b) The judge may, in his discretion, by written order, modify, add to, or subtract from the statutory powers granted in this section. (1973, c. 522, s. 6.)

#### **§ 28B-7. Resignation and removal.**

(a) A receiver appointed under authority of this Chapter may resign and his successor be appointed by complying with the provisions set forth in G.S. 36-9 through 36-18.2.

(b) If, after a receiver has been appointed, it is made to appear to the court upon the filing of a complaint or upon information received that the person appointed as receiver of the estate and property of the absentee in military service is legally incompetent, or that such person has been guilty of default or misconduct in due execution of his office, or that his appointment was obtained by false representation, or that such person has removed himself from this State, the court shall issue an order requiring such person to show cause why his appointment as a receiver should not be revoked. Upon the removal of a receiver of the estate or property of an absentee in military service, the court shall immediately appoint his successor. Pending any suit or proceeding between parties respecting such revocation, the clerk of superior court is authorized to make such interlocutory orders as may tend to better secure the estate and property of the absentee in military service. (1973, c. 522, s. 7.)

#### **§ 28B-8. Termination of receivership.**

(a) At any time upon petition signed by the absentee in military service, or on petition of an attorney-in-fact acting under an adequate power of attorney granted by the absentee in military service, the court shall direct the termination of the receivership and the transfer of all property held thereunder to the absentee in military service or to the designated attorney-in-fact.

(b) If at any time subsequent to the appointment of a receiver it shall appear that the absentee in military service has died and an executor or administrator has been appointed for his estate, the court shall terminate the receivership, certify all proceedings under the receivership to

the clerk of superior court, and transfer all property of the deceased absentee in military service held thereunder to such executor or administrator.

(c) When the need for a receivership terminates, the receiver shall promptly file a final inventory and accounting and his application for discharge with the court. If it appears to the court that the inventory and accounting are correct and that the receiver has made full and complete transfer of the assets of the absentee in military service as directed, the court may approve the inventory and accounting and discharge the receiver. If objections to the final inventory and accounting are filed, the court shall conduct a hearing under the same conditions for a hearing on objections to the annual accounting and inventory.

(d) Such discharge shall operate as a release from the duties of the receivership and as a bar to any suit against said receiver or his surety, unless such suit is commenced within one year from the date of discharge. (1973, c. 522, s. 8.)

**§ 28B-9. Specific property valued at less than \$5,000; summary procedure.**

(a) If the spouse of any person defined as an absentee in military service by this Chapter, or his next of kin, if said absentee in military service has no spouse, shall wish to sell or transfer any property of the absentee in military service which has a gross value of less than five thousand dollars (\$5,000), or shall require the consent of the absentee in military service in any matter regarding the children of the absentee in military service, or in any other matter in which the gross value of the subject matter is less than five thousand dollars (\$5,000), such spouse may apply to the superior court for an order authorizing said sale, transfer, or consent without opening a full receivership proceeding as provided by this Chapter. Said application shall be made by petition on the following form, which form shall be made available to the applicant by the clerk of the superior court:

STATE OF NORTH CAROLINA  
\_\_\_\_\_ COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

In re: (absentee), PETITION FOR SUMMARY APPOINTMENT OF RECEIVER NOW COMES, (name of petitioner), petitioner in this action, pursuant to G.S. \_\_\_\_\_, and requests the Court that he be appointed a receiver to sell/transfer (describe property) of the value of (value) because (give reasons). Petitioner is \_\_\_\_\_ years of age, resides at (address) in \_\_\_\_\_ County, North Carolina, and is the (relation) of (name of absentee) who has been (pow or mia) since (date of notification). The terms of the sale/transfer are (terms). Petitioner requires the consent of the absentee for the purpose of (give reasons).

(Signature) \_\_\_\_\_

The above named, \_\_\_\_\_, being by me duly sworn, says the foregoing petition is true and correct to the best of his knowledge.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

(b) The court shall, without hearing or notice, enter an order on said petition if it deems the relief requested in said petition necessary to protect the best interest of the absentee in military service or his dependents.

(c) Such order shall be prima facie evidence of the validity of the proceedings and the authority of the petitioner to make a conveyance or transfer property or to give the consent of the absentee in military service in any matter prescribed by subsection (a). (1973, c. 522, s. 9.)

**§ 28B-10. Specific property valued at more than \$5,000; summary procedure.**

(a) If the spouse, or the next of kin if there is no spouse, of any person defined as an absentee in military service under this Chapter shall wish to sell, lease, or mortgage specific property having a gross value of five thousand dollars (\$5,000) or more owned by the absentee in military service or in which the absentee has an interest, or take specific action with respect to any interest of the absentee in military service having a gross value of five thousand dollars (\$5,000) or more, such spouse may file a complaint with the superior court for an order authorizing the action with respect to such property or interest.

(b) The complaint shall contain all of the information called for by G.S. 28B-2(b) and, in addition, shall contain a description of the specific property or interest and the disposition to be made of it.

(c) The court shall hear evidence on the question of whether the person alleged to be missing or captured is an absentee in military service as defined by G.S. 28B-1 and on the question of whether the action in question should be authorized. Any person interested in such proceedings may intervene with leave of the court.

(d) The court may in its discretion appoint a guardian ad litem to represent the alleged absentee in military service at the hearing.

(e) If, after hearing, the court is satisfied that the person alleged to be an absentee in military service is, in fact, an absentee in military service as defined in G.S. 28B-1, and that the action is in the best interest of the absentee in military service and his dependents, the court shall enter an order appointing the petitioner as receiver for the purposes of the specific action which is the subject of the complaint and authorizing the receiver to take the specific action requested in the complaint. The court shall require the receiver to account for the proceeds of the specific sale, the specific lease, or other specific action. The court may retain jurisdiction of the proceeding to make such further orders as it deems proper.

(f) Such order shall be prima facie evidence of the validity of the proceedings and the authority of the petitioner to take the specific action requested.

(g) Other property of the absentee in military service not the specific subject of the complaint is not affected in any manner by the filing of such complaint as provided for in this section. (1973, c. 522, s. 10.)