

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 1329
HOUSE BILL 289

AN ACT TO REVISE THE GENERAL STATUTES RELATING TO THE
ADMINISTRATION OF DECEDENTS' ESTATES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 28 of the General Statutes and all other laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 2. Chapter 28A, as the same appears in the 1966 Replacement Volume 2A of the General Statutes, is hereby redesignated as Chapter 28C.

Sec. 3. A new Chapter 28A is hereby added to the General Statutes to read as follows:

"Chapter 28A.

"Administration of Decedents' Estates.

"Article 1.

"Definitions and Other General Provisions.

"§ 28A-1.1. Definitions. — As used in this Chapter, unless the context otherwise requires, the term:

- (1) 'Devisee' means any person entitled to take real or personal property under the provisions of a valid, probated will.
- (2) 'Foreign personal representative' means a personal representative appointed in another jurisdiction, including a personal representative appointed in another country.
- (3) 'Heir' means any person entitled to take real or personal property upon intestacy under the provisions of Chapter 29 of the General Statutes.
- (4) 'Mortgage' includes a deed of trust.
- (5) 'Personal representative' includes both an executor and an administrator, but does not include a collector.
- (6) 'Service' means delivery of the citation, summons, notice or other civil process to the person to be served by an officer authorized to serve process and, if such service cannot be obtained, then by the mailing of the citation, summons, notice or other civil process by certified mail, return receipt requested, to the last known address of the person to be served.

"§ 28A-1.2. Doctrine of worthier title abolished — The common law doctrine of worthier title, both the wills branch and the deeds branch, is hereby abolished.

"Article 2.

"Jurisdiction for Probate of Wills and Administration of Estates of Decedents.

"§ 28A-2.1. Clerk of superior court. — The clerk of superior court of each county, ex officio judge of probate, shall have jurisdiction of the administration, settlement, and distribution of estates of decedents including, but not limited to, the following:

- (1) Probate of wills;
- (2) Granting of letters testamentary and of administration, or other proper letters of authority for the administration of estates.

"§ 28A-2.2. **Assistant clerk of superior court.** — An assistant clerk of superior court shall have jurisdiction as provided by G.S. 7A-102.

"§ 28A-2.3. **Jurisdiction where clerk interested** — Whenever the clerk of superior court has an interest, direct or indirect, in an estate or trust within his jurisdiction, jurisdiction with respect thereto shall be vested in the senior resident superior court judge of his district, and shall extend to all things which the clerk of superior court might have done in the administration of such estate.

"Article 3.

"Venue for Probate of Wills and Administration of Estates of Decedents.

"§ 28A-3.1. **Proper county.** — The venue for the probate of a will and for all proceedings relating to the administration of the estate of a decedent shall be :

- (1) In the county in this State where the decedent had his domicile at the time of his death; or
- (2) If the decedent had no domicile in this State at the time of death, then in any county wherein the decedent left any property or assets or into which any property or assets belonging to this estate may have come. If there be more than one such county, that county in which proceedings are first commenced shall have priority of venue; or
- (3) If the decedent was a nonresident motorist who died in the State, then in any county in the State.

"§ 28A-3.2. **Proceedings to determine venue.** — (a) If proceedings are commenced in more than one county or if upon commencement of a proceeding a question arises as to the proper county of venue, or if for any other reason a delay arises in determining venue, then the matter shall be referred by the clerk of superior court before whom the question arises for a hearing before and determination by the senior resident superior court judge or any judge assigned to hold the superior courts of the district which includes the county where the proceedings were first commenced. The judge shall determine which is the proper county for administration of the estate and stay proceedings in all other counties. He shall make such orders as are necessary to transfer the entire proceedings to the proper county. The clerk of superior court of each county in which proceedings are stayed shall retain a true copy of the entire file and transmit the original to the clerk of superior court of such county as the judge directs.

(b) A proceeding shall be deemed commenced by the offering of a will for probate or by applying for letters of administration as provided by G.S. 28A-6.1 through G.S. 28A-6.5 or by applying for letters of collection as provided by G.S. 28A-11.1 through G.S. 28A-11.5 and the proceeding first legally commenced shall extend to all of the property or assets of the decedent in this State.

"§ 28A-3.3. **Procedure after determination of improper appointment.** — Where a person has been improperly appointed, and a different person in another county is determined under G.S. 28A-3.2(a) to be the properly appointed personal representative, such improperly appointed personal representative shall surrender to the properly appointed personal representative all assets of the estate under his control. In addition such improperly appointed personal representative shall file an accounting with the clerk of superior court in the proper county according to the form prescribed for collectors by G.S. 28A-11.4.

"§ 28A-3.4. **Liability of personal representative appointed in improper county.** — When a personal representative has been appointed in an improper county, and a different person in another county is determined under G.S. 28A-3.2(a) to be the properly appointed personal representative, such improperly appointed personal representative shall not thereby incur personal liability for administrative acts performed prior to the transfer except as provided in G.S. 28A-13.10.

"§ 28A-3.5. **Waiver of venue.** — If questions as to priority of venue are not raised within three months after the issuance of letters testamentary or letters of administration to the

personal representative, the validity of the proceeding shall not be affected by any error in venue.

"Article 4.

"Qualification and Disqualification for Letters Testamentary and Letters of Administration.

"§ 28A-4.1. **Order of persons qualified to serve.** — (a) Letters Testamentary. Letters testamentary shall be granted to the executor or executors named or designated in the will, or if no such person qualifies, to any substitute or successor executor named or designated in the will. If no person so named or designated qualifies, letters testamentary shall be granted to some other person nominated by a person upon whom the will expressly confers the authority to make such nomination. If none of the foregoing persons qualifies or if the clerk of superior court upon hearing finds that none of the foregoing persons is qualified in accordance with G.S. 28A-4.2, the clerk shall grant letters of administration in accordance with subsection (b).

(b) Letters of Administration. Letters of administration shall be granted to persons who are qualified to serve, in the following order, unless the clerk of superior court in his discretion determines that the best interests of the estate otherwise require:

- (1) The surviving spouse of the decedent;
- (2) Any devisee of the testator;
- (3) Any heir of the decedent;
- (4) Any creditor to whom the decedent became obligated prior to his death;
- (5) Any person of good character residing in the county who applies therefor; and
- (6) Any other person of good character not disqualified under G.S. 28A-4.2.

When applicants are equally entitled, letters shall be granted to the applicant who, in the judgment of the clerk of superior court, is most likely to administer the estate advantageously, or they may be granted to any two or more of such applicants.

"§ 28A-4.2. **Persons disqualified to serve as personal representative.** — No person is qualified to serve as a personal representative who:

- (1) Is under 18 years of age;
- (2) Has been adjudged incompetent in a formal proceeding and remains under such disability;
- (3) Is a convicted felon, under the laws either of the United States or of any state or territory of the United States, or of the District of Columbia and whose citizenship has not been restored;
- (4) Is a nonresident of this State who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate, and caused such appointment to be filed with the court; or who is a resident of this State who has, subsequent to appointment as a personal representative, moved from this State without appointing such process agent;
- (5) Is a corporation not authorized to act as a personal representative in this State;
- (6) Is an alien disqualified by law;
- (7) Has lost his rights as provided by Chapter 31A;
- (8) Is illiterate;
- (9) Is a person whom the clerk of superior court finds otherwise unsuitable; or
- (10) Is a person who has renounced either expressly or by implication as provided in G.S. 28A-5.1 and G.S. 28A-5.2.

"Article 5.

"Renunciation of Personal Representative.

"§ 28A-5.1. **Renunciation by executor.** — (a) Express Renunciation by Executor. Any person named or designated as executor in a duly probated will may renounce the office by filing with

the clerk of superior court a writing signed by such person, and acknowledged or proved to the satisfaction of the clerk.

(b) **Implied Renunciation by Executor.** If any person named or designated as executor fails to qualify or to renounce within 30 days after the will had been admitted to probate, the clerk of superior court, on application of any other person named or designated as executor in the will or of any interested person, shall, or on his own motion may, issue a citation to the person who has failed to qualify or renounce to show cause why he should not be deemed to have renounced. If, upon service of the citation, he does not qualify or renounce or show cause within the time fixed in the citation, such period to be not less than 10 nor more than 30 days, an order must be entered by the clerk of superior court adjudging that he has renounced. If cause be shown, the clerk of superior court may grant to such person a reasonable extension of time within which to qualify or renounce.

(c) **Procedure Upon Renunciation.** Upon renunciation by a person named or designated as executor, letters shall be issued to some other person as provided in G.S. 28A-4.1.

"§ 28A-5.2. Renunciation of right to administer. — (a) **Express Renunciation.** Any person entitled to apply for letters of administration may renounce the office by filing with the clerk of superior court a writing signed by such person, and acknowledged or proved to the satisfaction of the clerk.

(b) **Implied Renunciation.**

(1) If any person entitled to apply for letters of administration fails to apply therefor within 30 days from the date of death of the intestate, the clerk of superior court, on application of any interested person, shall, or on his own motion may, issue a citation to the person entitled to apply for letters of administration requiring him to show cause why he should not be deemed to have renounced. If, upon service of the citation, he does not apply for letters of administration and tender the required bond or show cause within the time shown in the citation, such period to be not less than 10 nor more than 30 days, an order must be entered by the clerk of superior court adjudging that he has renounced; and the clerk of superior court shall issue letters to some other person as provided in G.S. 28A-4.1. If cause be shown the clerk of superior court may grant to such person a reasonable extension of time within which to apply and qualify, or renounce.

(2) If no person entitled to administer applies for letters of administration within 90 days after the date of death of an intestate, then the clerk of superior court may, in his discretion, enter an order declaring all prior rights to apply for letters of administration to be renounced, and issue letters to some suitable person as provided in G.S. 28A-4.1.

(c) **Nomination by Person Renouncing.** Any person who expressly renounces his prior right to apply for letters of administration may at the same time nominate in writing some other person not disqualified under G.S. 28A-4.2 to be named as personal representative, and such designated person shall be entitled to the same priority of right to apply for letters of administration as the person making the nomination.

"Article 6.

"Appointment of Personal Representative.

"§ 28A-6.1. Application for letters; grant of letters. — (a) The application for letters of administration or letters testamentary shall be in the form of an affidavit sworn to before an officer authorized to administer oaths, signed by the applicant or his attorney, which may be supported by other proof under oath in writing, all of which shall be recorded and filed by the clerk of superior court, and shall allege the following facts:

(1) The name, and to the extent known, the domicile and the date and place of death of the decedent;

- (2) The legal residence and mailing address of the applicant;
- (3) The names, ages and mailing addresses of the decedent's heirs and devisees, including the names and mailing addresses of the guardians of those having court appointed guardians, so far as all of these facts are known or can with reasonable diligence be ascertained;
- (4) That the applicant is the person entitled to apply for letters, or that he applies after persons having prior right to apply are shown to have renounced under Article 5 of this Chapter, or that he applies subject to the provisions of G.S. 28A-6.2(1), and that he is not disqualified under G.S. 28A-4.2.
- (5) The nature and probable value of the decedent's property, both real and personal, and the location of such property, so far as all of these facts are known or can with reasonable diligence be ascertained; and
- (6) If the decedent was not domiciled in this State at the time of his death, a schedule of his property located in this State, and the name and mailing address of his domiciliary personal representative, or if there is none, whether a proceeding to appoint one is pending.

(b) If it appears to the clerk of superior court that the application and supporting evidence comply with the requirements of subsection (a) and on the basis thereof he finds that the applicant is entitled to appointment, he shall issue letters of administration or letters testamentary to the applicant unless in his discretion he determines that the best interests of the estate would be served by delaying the appointment of a personal representative, in which case he may appoint a collector as provided in Article 11.

"§ 28A-6.2. Letters issued without notice; exceptions. — Letters of administration or letters testamentary may be issued without notice, except:

- (1) When the applicant is not entitled to priority of appointment under G.S. 28A-4.1, all persons entitled to an equal or higher preference shall be given notice by citation as provided in G.S. 28A-5.2(b)(1), unless they have renounced in accordance with the provisions of Article 5 of this Chapter.
- (2) The clerk of superior court may in any case require that notice be given to such interested persons as he in his discretion may designate prior to the granting of letters.

"§ 28A-6.3. Appointment of successor to personal representative. — When the appointment of a sole or last surviving personal representative is terminated by death, resignation pursuant to Article 10 of this Chapter, or revocation pursuant to Article 9 of this Chapter, the clerk of superior court shall appoint another personal representative as provided by G.S. 28A-4.1 to act as his successor. When two or more personal representatives have qualified, and the appointment of one or more of them is terminated by death, resignation or revocation, leaving in office one or more personal representatives, the appointment of successors shall not be required unless:

- (1) The clerk of superior court determines, in his discretion, that it is in the best interest of the estate to appoint a successor or successors to such personal representative or personal representatives, or
- (2) In the case of executors, the will so provides.

"§ 28A-6.4. Right to contest appointment; procedure. — Any interested person may, by written objection filed with the clerk of superior court, with notice to the applicant, contest the issuance of letters of administration or letters testamentary to such applicant. After an objection has been duly filed, the clerk of superior court shall conduct a hearing and determine whether letters shall issue to the applicant. Appeal may be taken from the order of the clerk as in a special proceeding.

"§ 28A-6.5. Letters not subject to collateral attack. — The validity of letters issued shall not be subject to collateral attack.

"Article 7.

"Oath.

"§ 28A-7.1. Oath required before letters issue. — Before letters testamentary, letters of administration or letters of collection are issued to any person, he shall take and subscribe an oath or affirmation before the clerk of superior court, or before any other officer of any state or country authorized by the laws of North Carolina to administer oaths, that he will faithfully and honestly discharge the duties of his office. Such oath or affirmation shall be in the form prescribed in G.S. 11-11, and shall be filed in the office of the clerk of superior court.

"Article 8.

"Bond.

"§ 28A-8.1. Bond required before letters issue; when bond not required. — (a) Except as otherwise provided in subsection (b), every personal representative, before letters are issued, shall give bond, conditioned as provided in G.S. 28A-8.2.

(b) No bond shall be required of:

- (1) A resident executor, unless the express terms of the will require him to give bond.
- (2) A nonresident executor, when there is a resident executor named who has qualified as coexecutor unless the express terms of the will require them to give bond, or the clerk of superior court finds that such bond is necessary for the protection of the estate; or
- (3) A personal representative appointed solely for the purpose of bringing an action for the wrongful death of the deceased until such time as the personal representative shall receive property into the estate of the deceased; or
- (4) A personal representative which is a bank acting pursuant to G.S. 53-159.

"§ 28A-8.2. Provisions of bond — A bond given pursuant to this Article shall be:

- (1) Payable to the State to the use of all persons interested in the estate; and
- (2) Conditioned that the personal representative giving the bond shall faithfully execute the trust reposed in him and obey all lawful orders of the clerk of superior court or other court touching the administration of the estate committed to him; and
- (3) In an amount not less than:
 - a. One and one-fourth times the value of all personal property of the decedent when the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the clerk of superior court, when the value of the personal property to be administered by the personal representative exceeds one hundred thousand dollars (\$100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) thereof; or
 - b. Double the value of all personal property of the decedent when the bond is secured by one of the methods provided in subdivision (4)b., (4)c. or (4)d.; such value of said personal property to be ascertained by the clerk of superior court by examination, on oath, of the applicant or of some other person determined by the clerk to be qualified to testify as to its value; and
- (4) Secured by one or more of the following:
 - a. Suretyship bond executed, at the expense of the estate, by a corporate surety company authorized by the Commissioner of Insurance to do business in this State;
 - b. Suretyship bond executed and justified upon oath before the clerk of superior court by two or more sufficient personal sureties each of

whom shall reside in and own real estate in North Carolina and shall have assets with an aggregate value above encumbrances of not less than the amount of the penalty of the required bond;

- c. A first mortgage or first deed of trust in form approved by the Administrative Officer of the Courts on real estate located in North Carolina:
 1. Executed by the owner, and conditioned on the performance of the obligations of the bond, and
 2. Containing a power of sale which, in the case of a mortgage, is exercisable by the clerk of superior court upon a breach of any condition thereof, or, in the case of a deed of trust, is exercisable by the trustee after notice by the clerk of superior court that a breach of condition has occurred.

The clerk of superior court shall not accept such mortgage or deed of trust until it shall have been properly registered in the county or counties in which the real estate is located, and the clerk of superior court is satisfied that the real estate subject to the mortgage or deed of trust is worth the amount to be secured thereby, and that the mortgage or deed of trust is a first charge on said real estate. No such mortgage or deed of trust shall be cancelled or surrendered until the approval of the final account, unless substitution is permitted as provided in G.S. 28A-8.3(d).

- d. A deposit by the owner with the clerk of superior court of negotiable securities, of a kind permitted by law to be proper investments for fiduciaries exercising due care, having a fair market value determined by the clerk to be equal to the amount of the penalty of the bond. Such securities shall be properly endorsed, delivered to the clerk of superior court, and accompanied by a security agreement containing a power of sale authorizing the clerk of superior court to sell them in the event the person to whom letters are being issued commits a breach of any duty imposed upon him by law in respect of his office. Such securities shall not be surrendered by the clerk of superior court to the owner until the approval of the final account, unless substitution is permitted as provided in G.S. 28A-8.3(d). For the purposes of determining the value of the assets of the personal sureties in subdivision (4)b., or the value of the real estate in subdivision (4)c., or the value of the negotiable securities in subdivision (4)d., the clerk of superior court may require a certificate of the value of such property by one or more persons not interested in the estate determined by the clerk to be qualified to certify such value.

"§ 28A-8.3. Modification of bond requirements. — (a) Increase of Bond or Security in Case of Inadequacy or Insufficiency. The clerk of superior court may, on his own motion or upon verified application of any person interested in the estate, require the personal representative to give a new bond or to furnish additional security if he finds that the bond filed pursuant to this Article, or its security, is insufficient, inadequate in amount, or that any of the individual sureties has become or is about to become a nonresident or, in the case of a corporate surety, has withdrawn or is about to withdraw from doing business in this State. Before ordering the personal representative to give a new bond or furnish additional security, the clerk of superior court shall issue a citation requiring the personal representative, within 10 days after service thereof, to show cause why such action should not be taken. If the clerk of superior court finds that the bond filed or its security is insufficient or inadequate, he shall make an order requiring the personal representative to give a new bond or to furnish additional security within a reasonable time to be fixed in the order.

(b) Increase of Bond Upon Sale of Real Estate. When a personal representative makes application for an order to sell real estate, the provisions of G.S. 1-339.10 shall govern.

(c) Reduction of Bond. On application of the personal representative the penalty of the bond may be reduced from time to time when the clerk of superior court finds that such reduction is clearly justified, but in no event shall the penalty of the bond be reduced below the amount required by G.S. 28A-8.2(3).

(d) Substitution of Security. When a bond is secured by a mortgage or deed of trust on real estate as provided in G.S. 28A-8.2(4)c. or a deposit of negotiable securities as provided in G.S. 28A-8.2(4)d., the clerk of superior court may, on application of the personal representative, order that such real estate or negotiable securities, or a part thereof, be released upon the substitution therefor of other security in compliance with G.S. 28A-8.2(4)a., (4)c, or (4)d. Such substitution may be allowed in conjunction with any other modification of bond requirements permitted by this section.

"§ 28A-8.4. Failure to give additional bond; letters revoked. — If any personal representative fails to give an additional bond or new bond or to furnish additional security as ordered by the clerk of superior court pursuant to the provisions of this Article, within the time specified in any such order, the clerk of superior court shall proceed as provided in G.S. 28A-9.2.

"§ 28A-8.5. Rights of surety in danger of loss. — Any surety on the bond of a personal representative who is in danger of loss under his suretyship may file his petition on oath with the clerk of superior court setting forth the facts, and asking that such personal representative be removed from office, or that he be required to give security to indemnify the petitioner against apprehended loss, or that the petitioner be discharged as surety and be released from liability for any future breach of the bond. The clerk of superior court shall thereupon issue a citation to the personal representative, requiring him to answer the petition within 10 days after service thereof. If, upon the hearing, the clerk of superior court determines that the surety is entitled to relief, he may grant the same in such manner as to serve the best interest of the estate. In any event, however, the previous surety shall not be released from liability for any breach of duty by the personal representative occurring prior to the filing of bond with a new surety unless the new surety assumes liability for the earlier breaches.

"§ 28A-8.6. Action against obligors on bond of personal representative. — Any person injured by the breach of any bond given by a personal representative or collector may institute a civil action against one or more of the obligors of the bond and recover such damages as he may have sustained. Any successor personal representative, or any other personal representative of the same decedent, may institute such action on behalf of the persons interested in the estate. Any such action against one or more of the obligors of the bond shall be brought in the name of the State of North Carolina and shall be instituted in the county in which letters were issued to the personal representative or collector, and the clerk of superior court shall give notice of the institution of the action in such manner as he may determine to all other persons shown by his records to be interested in the estate. The bond of the personal representative is not void after the first or any subsequent recovery thereon until the entire penalty is recovered. If the plaintiff fails to prevail, costs may be taxed against the person or persons for whose benefit the action on a personal representative's bond is prosecuted.

"Article 9.

"Revocation of Letters.

"§ 28A-9.1. Revocation after hearing. — (a) Grounds. Letters testamentary, letters of administration, or letters of collection may be revoked after hearing on any of the following grounds:

- (1) The person to whom they were issued was originally disqualified under the provisions of G.S. 28A-4.2 or has become disqualified since the issuance of letters.

- (2) The issuance of letters was obtained by false representation or mistake.
- (3) The person to whom they were issued has violated a fiduciary duty through default or misconduct in the execution of his office, other than acts specified in G.S. 28A-9.2.
- (4) The person to whom they were issued has a private interest, whether direct or indirect, that might tend to hinder or be adverse to a fair and proper administration. The relationship upon which the appointment was predicated shall not, in and of itself, constitute such an interest.

(b) Procedure. When it appears to the clerk of superior court, on his own motion or upon verified complaint made to him by any person interested in the estate, that any of the grounds set forth in subsection (a) may exist with regard to any personal representative or collector within his jurisdiction, he shall issue citation requiring such personal representative or collector, within 10 days after service thereof, to show cause why his letters should not be revoked. On the return of such citation duly executed, the clerk of superior court shall set the date for a hearing. Notice of the time and date of the hearing shall be given to such persons and in such manner as the clerk of superior court shall determine. If at the hearing the clerk of superior court finds any one of the grounds set forth in subsection (a) to exist, he shall revoke the letters issued to such personal representative or collector.

"§ 28A-9.2. Summary revocation. — (a) Grounds. Letters testamentary, letters of administration, or letters of collection, shall be revoked by the clerk of superior court without hearing when:

- (1) After letters of administration or collection have been issued, a will is subsequently admitted to probate.
- (2) After letters testamentary have been issued:
 - a. The will is set aside, or
 - b. A subsequent testamentary paper revoking the appointment of the executor is admitted to probate.
- (3) Any personal representative or collector required to give a new bond or furnish additional security pursuant to G.S. 28A-8.3 fails to do so within the time ordered.
- (4) A nonresident personal representative refuses or fails to obey any citation, notice, or process served on him or his process agent.
- (5) A trustee in bankruptcy, liquidating agent, or receiver has been appointed for any personal representative or collector, or any personal representative or collector has executed an assignment for the benefit of creditors.
- (6) A personal representative has failed to file an inventory and appraisal report or an annual account with the clerk of superior court, as required by Article 20 and Article 21 of this Chapter, and proceedings to compel such filing pursuant to G.S. 28A-20.2 or G.S. 28A-21.4 cannot be had because service cannot be completed because the personal representative cannot be found.

(b) Procedure. Upon the occurrence of any of the acts set forth in subsection (a), the clerk of superior court shall enter an order revoking the letters issued to such personal representative or collector and shall cause a copy of the order to be served on him or his process agent.

"§ 28A-9.3. Effect of revocation. — Upon entry of the order revoking his letters, the authority of the personal representative or collector shall cease. He shall surrender all assets of the estate under his control to his successor, or the remaining personal representative or collector or to the clerk of superior court; and shall file an accounting in the form prescribed by Article 21 of this Chapter. A personal representative or collector whose letters are revoked pursuant to G.S. 28A-9.2(a)(1) or G.S. 28A-9.2(a)(2) shall not thereby incur personal liability for administrative acts performed prior to revocation except as provided in G.S. 28A-13.10.

"§ 28A-9.4. **Appeal; stay effected.** — Any interested person may appeal from the order of the clerk of superior court granting or denying revocation. The procedure shall be the same as in a special proceeding. If the clerk of superior court has revoked the letters, such appeal shall stay the judgment and order of the clerk until the cause is heard and determined upon appeal.

"§ 28A-9.5. **Interlocutory orders.** — Pending any proceeding or appeal with respect to revocation of letters, the clerk of superior court may enter such interlocutory orders as are necessary to preserve the assets of the estate.

"§ 28A-9.6. **Appointment of successor to personal representative or collector whose letters have been revoked; when not required.** — Upon the revocation of letters issued to a sole or last surviving personal representative or collector, the clerk of superior court shall appoint another personal representative or collector as provided by G.S. 28A-4.1 to act as his successor. When two or more personal representatives or collectors have qualified, and the letters of one or more personal representatives or collectors are revoked, leaving in office one or more personal representatives or collectors, the appointment of successors shall not be required unless:

- (1) The clerk of superior court determines, in his discretion, that it is in the best interest of the estate to appoint a successor or successors to the personal representatives or collectors whose letters have been revoked, or
- (2) In the case of executors, the will so provides.

"§ 28A-9.7. **Rights and duties devolve on successor.** — After the revocation of letters pursuant to this Article and upon the qualification and appointment of a successor, the substituted personal representative or collector shall succeed to all the powers stated in G.S. 28A-13.7. He shall be subject to all the duties, responsibilities and liabilities of the original personal representative or collector, other than liabilities arising out of the grounds for revocation.

"Article 10.

"Resignation.

"§ 28A-10.1. **Clerk's power to accept resignation.** — The clerk of superior court in the county where a person has been appointed personal representative shall have the power to accept his resignation.

"§ 28A-10.2. **Contents of petition; notice.** — (a) When a personal representative desires to resign his office, he shall file a verified petition in the office of the clerk of the superior court, setting forth:

- (1) The facts relating to his appointment and qualification;
- (2) The names and residences of all interested persons known to him;
- (3) A full statement of the reasons why the petitioner should be permitted to resign his office; and
- (4) A statement that he has filed with the clerk of superior court his accounts and a record of his conduct of the office.

(b) Notice of the petition for resignation, together with the date and time of the hearing thereon, shall be served upon all interested persons named in the petition in such manner as the clerk of superior court shall determine.

"§ 28A-10.3. **Statement of account; record of conduct.** — When the personal representative files his petition requesting permission to resign his office, he shall also file a verified statement of:

- (1) His accounts since his qualification, or if he has previously filed an account, a statement of his accounts since the date thereof;
- (2) The assets of the estate and their location;
- (3) The debts and liabilities of the estate;
- (4) All facts and circumstances known to him the disclosure of which is necessary for a full and fair assessment of his conduct of the office; and

- (5) All additional facts and circumstances known to him the disclosure of which is necessary for a full and fair understanding of all matters concerning the estate.

"§ 28A-10.4. Hearing; order. — The clerk of superior court shall conduct a hearing on the petition not sooner than 10 days nor later than 20 days after notice to interested persons pursuant to G.S. 28A-10.2(b). If the clerk of superior court finds all the accounts proper, including accounts subsequent to the filing of the petition, and determines that the resignation of the personal representative is in the best interest of the estate and can be allowed, the resignation may be approved subject to the provisions of G.S. 28-10.5. Except in cases governed by G.S. 28A-10.8, he shall appoint a successor pursuant to G.S. 28A-4.1.

"§ 28A-10.5. When resignation becomes effective. — The resignation shall not become effective until:

- (1) A successor has been duly qualified, unless G.S. 28A-10.8 is applicable; and
- (2) The clerk of superior court is satisfied that the accounts of the personal representative are true and correct; and
- (3) The personal representative has accounted to his successor in full for all assets of the estate, or if pursuant to G.S. 28A-10.8 no successor is appointed, to the remaining personal representative or representatives, and his final account has been filed with and approved by the clerk of superior court.

"§ 28A-10.6. Appeal; stay effected. — Any interested person who has appeared at the hearing and objected to the order of the clerk of superior court granting or denying resignation may appeal therefrom. The procedure shall be the same as in a special proceeding. If the clerk of superior court has allowed the resignation, such appeal shall stay the order of the clerk until the cause is heard and determined upon appeal.

"§ 28A-10.7. Rights and duties devolve on successor. — Upon the qualification and appointment of a successor to a personal representative whose resignation has been allowed as provided in G.S. 28A-10.4, the substituted personal representative shall succeed to all the powers stated in G.S. 28A-13.7 and shall also be subject to all the duties, responsibilities, and liabilities stated in Article 13.

"§ 28A-10.8. When appointment of successor to personal representative who has resigned is not required. — When two or more personal representatives have qualified, and one or more personal representatives resign pursuant to this Article, leaving in office one or more personal representatives, the appointment of successors shall not be required unless:

- (1) The clerk of superior court determines, in his discretion, that it is in the best interest of the estate to appoint a successor or successors to the personal representative or representatives who have resigned, or
- (2) In the case of executors, the will so provides.

"Article 11.

"Collectors.

"§ 28A-11.1. Appointment and qualifications of collectors. — When for any reason other than a situation provided for in Chapter 28B or Chapter 28C entitled 'Estates of absentees in Military Service' and 'Estates of Missing Persons' a delay is encountered in the issuance of letters to a personal representative or when, in any case, the clerk of superior court finds that the best interest of the estate would be served by the appointment of a collector, he may issue letters of collection to any person or persons not disqualified to act as a personal representative under G.S. 28A-4.2.

"§ 28A-11.2. Oath and bond. — Every collector shall take an oath as prescribed in G.S. 28A-7.1 and give bond as required in Article 8 of this Chapter for personal representatives.

"§ 28A-11.3. Duties and powers of collectors. — (a) Every collector shall:

- (1) Take such possession, custody, or control of the personal property of the decedent as in the exercise of reasonable judgment he deems necessary to its preservation;
- (2) Publish notices to creditors as provided by Article 14 of this Chapter;
- (3) Collect claims payable to the estate;
- (4) Maintain and defend actions in behalf of the estate;
- (5) File inventories, accounts, and other reports in the same manner as is required of personal representatives;
- (6) Renew obligations of the decedent in the same manner as the personal representative is allowed to do under the provisions of Article 13 of this Chapter; and
- (7) Under the express direction and supervision of the clerk of superior court, possess, exercise and perform all other powers, duties and liabilities given to personal representatives by Article 13 of this Chapter.

"§ 28A-11.4. When collectors' powers cease; settlement of accounts.— (a) When letters testamentary or letters of administration are issued, or when in any case the clerk of superior court terminates the appointment of the collector, the powers of the collector cease.

(b) Upon the termination of his appointment, the collector shall surrender to the personal representative or to the person otherwise entitled thereto or to the clerk all assets of the estate under his control and shall file with the clerk a verified statement of:

- (1) His accounts since his qualification, or if he has previously filed an account, a statement of his accounts since the date thereof;
- (2) The assets of the estate and their location;
- (3) The debts and liabilities of the estate;
- (4) All facts and circumstances known to him the disclosure of which is necessary for a full and fair assessment of his conduct of the office; and
- (5) All additional facts and circumstances known to him the disclosure of which is necessary for a full and fair understanding of all matters concerning the estate.

(c) The clerk of superior court shall examine the account of the collector and if he finds all of the accounts proper, he shall by order approve the account.

"Article 12.

"Public Administrator.

"§ 28A-12.1. Appointment and term. — There shall be a public administrator in every county, appointed by the clerk of superior court, with the written approval of the senior resident superior court judge of the district in which the appointment is made, for a term of four years.

"§ 28A-12.2. Oath of office. — The public administrator shall take and subscribe an oath or affirmation in the form provided in G.S. 11-11 for administrators and in the manner provided in G.S. 28A-7.1; and the oath or affirmation so taken and subscribed shall be filed in the office of the clerk of superior court.

"§ 28A-12.3. Qualification and bond. — (a) No appointment as public administrator shall become effective until the appointee has at his own expense entered into bond, secured by any of the methods provided in G.S. 28A-8.2(4), in the penal sum of not less than five thousand dollars (\$5,000) payable to the State of North Carolina, conditioned upon the faithful performance of the duties of his office and obedience to all lawful orders of the clerk of superior court or other court touching the administration of the several estates committed to him.

(b) The public administrator also shall qualify and give bond with regard to each estate administered by him as provided in Article 8 of this Chapter, at the expense of such estate.

"§ 28A-12.4. **When public administrator shall apply for letters.** — The public administrator shall apply for and may, with the approval of the clerk of superior court, obtain letters on the estates of decedents when:

- (1) It is brought to his attention that a period of six months has elapsed from the death of any decedent who has died owning property, and no letters testamentary, or letters of administration or collection, have been applied for or issued to any person; or
- (2) Any person without known heirs shall die intestate owning property; or
- (3) Any person entitled to apply for letters of administration shall, in writing, request the clerk to issue letters to the public administrator as provided in G.S. 28A-5.2(c).

"§ 28A-12.5. **Powers and duties.** — (a) The public administrator shall have, in respect to the several estates in his hands, all the rights and powers and shall be subject to all the duties and liabilities of other personal representatives.

(b) After the expiration of the term of office of a public administrator or his resignation as public administrator, he shall continue, subject to the provisions of Articles 9 and 10 of this Chapter, to administer the several estates previously committed to him until he has fully administered the same, and his bonds shall continue in effect as to all such estates.

"§ 28A-12.6. **Removal from office.** — If letters of administration issued to the public administrator with respect to any estate are subsequently revoked on the grounds that they were obtained by false representation as provided in G.S. 28A-9.1(a)(2), or on the grounds specified in G.S. 28A-9.1(a)(1), G.S. 28A-9.1 (a)(3), G.S. 28A-9.2(a)(3), G.S. 28A-9.2(a)(5), or G.S. 28A-9.2(a)(6) or if he becomes a nonresident of the State, the clerk of superior court shall order the removal of the public administrator from office.

"§ 28A-12.7. **Procedure after removal from office.** — The clerk of superior court shall require of any public administrator who is removed from office pursuant to G.S. 28A-12.6 a complete accounting of all his activities as public administrator and for the property remaining under his control by reason of his appointment under this Article as administrator of any estate that has not been fully administered at the time of his removal. If it appears to the clerk of superior court that grounds exist for revocation of letters of administration issued with respect to any such estate, he shall proceed in accordance with the provisions of Article 9 of this Chapter. If letters of administration are revoked pursuant to such proceedings, the clerk of superior court shall issue letters of administration to the successor public administrator or to some other person not disqualified under G.S. 28A-4.2.

"Article 13.

"Representative's Powers, Duties and Liabilities.

"§ 28A-13.1. **Time of accrual of duties and powers.** — The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

"§ 28A-13.2. **General duties; relation to persons interested in estate.** — A personal representative is a fiduciary who, in addition to the specific duties stated in this Chapter, is under a general duty to settle the estate of his decedent as expeditiously and with as little sacrifice of value as is reasonable under all of the circumstances. He shall use the authority and powers conferred upon him by this Chapter, by the terms of the will under which he is acting, by any order of court in proceedings to which he is party, and by the rules generally applicable

to fiduciaries, for the best interests of all persons interested in the estate, and with due regard for their respective rights.

"§ 28A-13.3. **Powers of personal representative.** — (a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13.6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent man would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including but not limited to the powers specified in the following subdivisions:

- (1) To take possession, custody or control of the personal property of the decedent. If in the opinion of the personal representative his possession, custody or control of such property is not necessary for purposes of administration, such property may be left with or surrendered to the heir or devisee presumptively entitled thereto. He has the power to take possession, custody or control of the real property of the decedent if he determines such possession, custody or control is in the best interest of the administration of the estate. Prior to exercising such power over real property the procedure as set out in subsection G.S. 28A-13.3(c) shall be followed. If the personal representative determines that such possession, custody or control is not in the best interest of the administration of the estate such property may be left with or surrendered to the heir or devisee presumptively entitled thereto.
- (2) To retain assets owned by the decedent pending distribution or liquidation even though such assets may include items which are otherwise improper for investment of trust funds.
- (3) To receive assets from other fiduciaries or other sources.
- (4) To complete performance of contracts entered into by the decedent that continue as obligations of his estate, or to refuse to complete such contracts, as the personal representative may determine to be in the best interests of the estate, but such refusal shall not limit any cause of action which might have been maintained against decedent if he had refused to complete such contract. In respect to enforceable contracts by the decedent to convey an interest in land, the provisions of G.S. 28A-17.9 are controlling.
- (5) To deposit, as a fiduciary, funds of the estate in a bank, including a bank operated by the personal representative upon compliance with the provisions of G.S. 36-27.
- (6) To deposit, as a fiduciary, funds of the estate, when such are not needed to meet debts and expenses immediately payable and are not immediately distributable, including moneys received from the sale of other assets, in interest-bearing accounts insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or to enter into other short-term loan arrangements that may be appropriate for use by trustees or fiduciaries generally.
- (7) To abandon or relinquish all rights in any property when, in the opinion of the personal representative acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in such condition that it is of no benefit to the estate.
- (8) To vote shares of stock or other securities in person or by general or limited proxy.
- (9) To pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

- (10) To hold shares of stock or other securities in the name of a nominee, without mention of the estate in the instrument representing stock or other securities or in registration records of the issuer thereof; provided, that a. the estate records and all reports or accounts rendered by the personal representative clearly show the ownership of the stock or other securities by the personal representative and the facts regarding its holdings, and b. the nominee shall not have possession of the stock or other securities or access thereto except under the immediate supervision of the personal representative or when such securities are deposited by the personal representative in a clearing corporation as defined in G.S. 25-8-102(3). Such personal representative shall be personally liable for any acts or omissions of such nominee in connection with such stock or other securities so held, as if such personal representative had done such acts or been guilty of such omissions.
- (11) To insure, at the expense of the estate, the assets of the estate in his possession, custody or control against damage or loss.
- (12) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the personal representative shall deem advisable, including the power of a corporate personal representative to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the estate, and to mortgage, pledge or otherwise encumber such portion of the estate as may be required to secure such loan or loans. In respect to the borrowing of money on the security of the real property of the decedent, G.S. 28A-17.11 is controlling.
- (13) To renew obligations of the decedent for the payment of money.
- (14) To advance his own money for the protection of the estate, and for all expenses, losses and liabilities sustained in the administration of the estate or because of the holding or ownership of any estate assets. For such advances, with any interest, the personal representative shall have a lien on the assets of the estate as against a devisee or heir.
- (15) To compromise, adjust, arbitrate, sue on or defend, abandon, or Otherwise deal with and settle claims in favor of or against the estate.
- (16) To pay taxes, assessments, his own compensation, and other expenses incident to the collection, care, administration and protection of the assets of the estate in his possession, custody or control.
- (17) To sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.
- (18) To allocate items of income or expense to either estate income or principal, as permitted or provided by law.
- (19) To employ persons, including attorneys, auditors, investment advisors, appraisers or agents to advise or assist him in the performance of his administrative duties.
- (20) To continue any business or venture in which the decedent was engaged at the date of his death, where such continuation is reasonably necessary or desirable to preserve the value, including good will, of the decedent's interest in such business. With respect to the use of the decedent's interest in a continuing partnership, the provisions of G.S. 59-71 and 59-72 qualify this power; and with respect to farming operations engaged in by the decedent at the time of his death, the provisions of G.S. 28A-13.4 qualify this power.

- (21) To incorporate or participate in the incorporation of any business or venture in which the decedent was engaged at the time of his death.
 - (22) To provide for the exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.
 - (23) To maintain actions for the wrongful death of the decedent according to the provisions of Article 18 of this Chapter and to compromise or settle any such claims, whether in litigation or not, provided that any such settlement shall be subject to the approval of a judge of superior court unless all persons who would be entitled to receive any damages recovered under G.S. 28A-18.2(b)(3) are competent adults and have consented in writing. It shall be the duty of the personal representative in distributing the proceeds of such settlement in any instance to take into consideration and to make a fair allocation to those claimants for funeral, burial, hospital and medical expenses which would have been payable from damages which might have been recovered had a wrongful death action gone to judgment in favor of the plaintiff.
 - (24) To maintain any appropriate action or proceeding to recover possession of any property of the decedent, or to determine the title thereto; to recover damages for any injury done prior to the death of the decedent to any of his property; and to recover damages for any injury done subsequent to the death of the decedent to such property.
 - (25) To purchase at any public or private sale of any real or personal property belonging to the decedent's estate or securing an obligation of the estate as a fiduciary for the benefit of the estate when, in his opinion, it is necessary to prevent a loss to the estate.
 - (26) To sell or lease personal property of the estate in the manner prescribed by the provisions of Article 16 of this Chapter.
 - (27) To sell or lease real property of the estate in the manner prescribed by the provisions of Article 17 of this Chapter.
 - (28) To enter into agreements with taxing authorities to secure the benefit of the federal marital deduction pursuant to G.S. 28A-22.6.
 - (29) To pay or satisfy the debts and claims against the decedent's estate in the order and manner prescribed by Article 19 of this Chapter.
 - (30) To distribute any sum recovered for the wrongful death of the decedent according to the provisions of G.S. 28A-18.2; and to distribute all other assets available for distribution according to the provisions of this Chapter or as otherwise lawfully authorized.
 - (31) To exercise such additional lawful powers as are conferred upon him by the will.
 - (32) To execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the personal representative.
- (b) Any question arising out of the powers conferred by subsection (a) above shall be determined in accordance with the provisions of Article 18 of this Chapter.
- (c) Prior to the personal representative exercising possession, custody or control over real property of the estate he shall petition the clerk of court to obtain an order authorizing such possession, custody or control. The petition shall include:
- a. A description of the real property which is the subject of the petition;
 - b. The names, ages, and addresses, if known, of the devisees and heirs of the decedent;

- c. A statement by the personal representative that he has determined that such possession, custody or control is in the best interest of the administration of the estate.

The devisees and heirs will be made parties to the proceeding by service of summons in the manner prescribed by law. If the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or control he shall grant an order authorizing that power.

"§ 28A-13.4. Continuance of farming operations of deceased persons. — When any person dies while engaged in farming operations, his personal representative is authorized to continue such farming operations until the end of the current calendar year, and until all crops grown during that year are harvested. The net income from such farming operations shall be personal assets of the estate. Any indebtedness incurred in connection with such farming operations after the date of death shall be preferred over the claims of any heir, legatee, devisee, distributee, general or unsecured creditor of said estate. Nothing herein contained shall limit the powers of a personal representative under the terms of a will.

"§ 28A-13.5. Personal representatives hold in joint tenancy. — Any estate or interest in property which becomes vested in two or more personal representatives shall be held by them in joint tenancy with the incident of survivorship.

"§ 28A-13.6. Exercise of powers of joint personal representatives by one or more than one. — (a) As used in this section, the term 'personal representatives' includes testamentary trustees.

(b) If a will expressly makes provision for the execution of any of the powers of personal representatives by all of them or by any one or more of them, the provisions of the will govern.

(c) If there is no governing provision in the will, personal representatives may, by written agreement signed by all of them and filed with and approved by the clerk of superior court of the county in which such personal representatives qualified, provide that any one or more of the following powers of personal representatives may be exercised by any designated one or more of them:

- (1) Open bank accounts and draw checks thereon;
- (2) Subject to the provisions of G.S. 105-24, enter any safe-deposit box of the deceased or any safe-deposit box rented by the personal representative or representatives;
- (3) Employ attorneys and accountants;
- (4) List property for taxes and prepare and file State, municipal and county tax returns;
- (5) Collect claims and debts due the estate and give receipts therefor;
- (6) Pay claims against and debts of the estate;
- (7) Compromise claims in favor of or against the estate;
- (8) Have custody of property of the estate.

(d) The voting of corporate shares of stock is governed by the provisions of G.S. 55-69(f).

(e) Subject to the provisions of subsections (b), (c) and (d) of this section, all other acts and duties must be performed by both of the personal representatives if there are two, and by a majority of them if there are more than two.

(f) No personal representative shall be relieved of liability on his bond or otherwise by entering into any agreement under this section.

"§ 28A-13.7. Powers and duties of successor personal representative. — A successor personal representative is one appointed to succeed a personal representative whose appointment has terminated by death, resignation or revocation. Unless a contrary intent clearly

appears from the will, a successor personal representative has all the powers and duties, discretionary or otherwise, of the original personal representative.

"§ 28A-13.8. Powers and duties of administrator with will annexed. — When an administrator with the will annexed has been appointed, whether or not he is succeeding a previously appointed personal representative, he has the same powers and duties, discretionary or otherwise, as if he had been named executor in the will, unless a contrary intent clearly appears from the will.

"§ 28A-13.9. Powers of surviving personal representative. — When one or more of those nominated as co-executors in a will is not appointed, or when the appointment of one or more joint personal representatives is terminated, every power granted to such joint personal representatives may be exercised by the surviving representative or representatives; provided that nothing to the contrary appears in the will of a testate decedent.

"§ 28A-13.10. Liability of personal representative. — (a) Property of estate. A personal representative shall be liable for and chargeable in his accounts with all of the estate of the decedent which comes into his possession at any time, including all the income therefrom; but he shall not be liable for any debts due to the decedent or other assets of the estate which remain uncollected without his fault. He shall not be entitled to any profit by an increase in value, nor be chargeable with loss by a decrease in value or destruction without his fault, of any part of the estate.

(b) Property not a part of estate. A personal representative shall be chargeable in his accounts with property not a part of the estate which comes into his possession at any time and shall be liable to the persons entitled thereto if:

- (1) The property was received under a duty imposed on him by law in the capacity of personal representative; or
- (2) He has commingled such property with the assets of the estate.

(c) Breach of duty. A personal representative shall be liable and chargeable in his accounts for any loss to the estate arising from his embezzlement or commingling of the estate with other property; for loss to the estate through self-dealing; for any loss to the estate from wrongful acts or omissions of his joint personal representatives which he could have prevented by the exercise of ordinary care; and for any loss to the estate arising from his failure to act in good faith and with such care, foresight and diligence as an ordinarily reasonable and prudent man would act with his own property under like circumstances. If the exercise of power concerning the estate is improper, the personal representative is liable for breach of fiduciary duty to interested persons for resulting damage or loss to the same extent as a trustee of an express trust.

"Article 14.

"Notice to Creditors.

"§ 28A-14.1. Advertisement for claims. — Every personal representative and collector within 20 days after the granting of letters shall notify all persons, firms and corporations having claims against the decedent to present the same to such personal representative or collector, on or before a day to be named in such notice, which day must be six months from the day of the first publication or posting of such notice. The notice shall be published once a week for four consecutive weeks in a newspaper qualified to publish legal advertisements, if any such newspaper is published in the county. If there is no newspaper published in the county, but there is a newspaper having general circulation in the county, then at the option of the personal representative, or collector, the notice shall be published once a week for four consecutive weeks in the newspaper having general circulation in the county and posted at the courthouse or the notice shall be posted at the courthouse and four other public places in the county. Personal representatives are not required to publish notice to creditors if the only asset of the estate consists of a claim for damages arising from death by wrongful act.

"§ 28A-14.2. **Proof of advertisement**— A copy of the advertisement directed by G.S. 28A-14.1 to be posted or published, together with an affidavit or affidavits by one of the persons authorized by G.S. 1-600(a) to make affidavits to the effect that such notice was posted or published in accordance with G.S. 28A-14.1, shall be filed in the office of the clerk of superior court by the personal representative or collector. The copy of the notice together with such affidavit or affidavits shall be deemed a record of the court, and a copy thereof, duly certified by the clerk of superior court, shall be received as prima facie evidence of the fact of publication in all the courts of this State.

"§ 28A-14.3. **Personal notice to creditor.** — The personal representative or collector may cause the notice to be personally served on any creditor.

"Article 15.

"Assets; Discovery of Assets.

"§ 28A-15.1. **Assets of the estate generally.** — (a) All of the real and personal property, both legal and equitable, of a decedent shall be assets available for the discharge of debts and other claims against his estate in the absence of a statute expressly excluding any such property. Provided that before real property is selected the personal representative must determine that such selection is in the best interest of the administration of the estate.

(b) In determining what property of the estate shall be sold, leased, pledged, mortgaged or exchanged for the payment of the debts of the decedent and other claims against his estate, the personal representative shall select the assets which in his judgment are calculated to promote the best interests of the estate. In the selection of assets for this purpose, there shall be no necessary distinction between real and personal property, absent any contrary provision in the will.

(c) If it shall be determined by the personal representative that it is in the best interest of the administration of the estate to sell, lease, or mortgage any real estate or interest therein to obtain money for the payment of debts and other claims against the decedent's estate, the personal representative shall institute a special proceeding before the clerk of superior court for such purpose pursuant to Article 17 of this Chapter.

(d) The crops of every deceased person, remaining ungathered at his death, shall, in all cases, belong to the personal representative or collector, as part of the personal assets of the decedent's estate; and shall not pass to the devisee by virtue of any devise of the land, unless such intent be manifest and specified in the will.

"§ 28A-15.2. **Title and possession of property.** — (a) Personal Property. Subsequent to the death of the decedent and prior to the appointment and qualification of the personal representative or collector, the title and the right of possession of personal property of the decedent is vested in his heirs; but upon the appointment and qualification of the personal representative or collector, the heirs shall be divested of such title and right of possession which shall be vested in the personal representative or collector relating back to the time of the decedent's death for purposes of administering the estate of the decedent. But, if in the opinion of the personal representative, his possession, custody and control of any item of personal property is not necessary for purposes of administration, such possession, custody and control may be left with or surrendered to the heir or devisee presumptively entitled thereto.

(b) Real Property. (1) The title to real property of a decedent is vested in his heirs as of the time of his death; but the title to real property of a decedent devised under a valid probated will becomes vested in the devisees and shall relate back to the decedent's death, subject to the provisions of G.S. 31-39.

"§ 28A-15.3. **Non-exoneration of encumbered property.** — When real or personal property subject to any lien or security interest, except judgment liens, is specifically devised, the devisee takes the property subject to the encumbrance and without a right to have other assets of the decedent applied to discharge the secured obligation, unless an express provision of the

will confers such right of exoneration. A general testamentary direction to pay the debts of the decedent is not sufficient to confer such right.

"§ 28A-15.4. Encumbered assets. — When any assets of the estate are encumbered by mortgage, pledge, lien or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the encumbered assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate; provided that payment of an encumbrance shall not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration by express provisions of the will.

"§ 28A-15.5. Order in which assets appropriated; abatement. — (a) General Rules. In the absence of testamentary indication as to the order of abatement, or some other controlling statute, shares of devisees and of heirs abate, without any preference or priority as between real and personal property, in the following order:

- (1) Property not disposed of by the will;
- (2) Residuary devisees;
- (3) General devisees;
- (4) Specific devisees.

For purposes of abatement, a demonstrative devise of money or property payable out of or charged on a particular fund or other property is treated as a specific devise; but if the particular fund or property out of which the demonstrative devise is to be paid is nonexistent or insufficient at the death of the testator, the deficiency is to be payable out of the general estate of the decedent and is to be regarded as a general devise and must abate pro rata with other general devisees. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received, had full distribution of the property been made in accordance with the terms of the will.

(b) Abatement; Sales; Contribution. When property which has been specifically devised is sold, leased, or mortgaged, or a security therein is created, by the personal representative, abatement shall be achieved by ratable adjustments in, or contributions from other interest in the remaining assets. The clerk of superior court shall, at the time of the hearing on the petition for final distribution, determine the amounts of the respective contributions and whether the same shall be made before distribution or shall constitute a lien on specific property which is distributed.

"§ 28A-15.6. Federal income tax refunds; joint returns. — Upon the determination by the United States Treasury Department of an overpayment of income tax by a married couple filing a joint federal income tax return, one of whom has died since the filing of such return or where a joint federal income tax return is filed on behalf of a husband and wife, one of whom has died prior to the filing of the return, any refund of the tax by reason of such overpayment, if not in excess of five hundred dollars (\$500.00), shall be the sole and separate property of the surviving spouse. In the event that both spouses are dead at the time such overpayment is determined, such refund, if not in excess of five hundred dollars (\$500.00), shall be the sole and separate property of the estate of the spouse who died last and may be paid directly by the Treasury Department to the executor or administrator of such estate, or to the person entitled to the possession of the assets of a small estate pursuant to the provisions of Article 25 of this Chapter.

"§ 28A-15.7. Same; separate returns. — Upon the determination by the United States Treasury Department of an overpayment of income tax by any married person filing a separate return, any refund of the tax by reason of such overpayment, if not in excess of two hundred fifty dollars (\$250.00), exclusive of interest, shall be the sole and separate property of the surviving spouse, and the United States Treasury Department may pay said sum directly to

such surviving spouse, and such payment to the extent thereof shall operate as a complete acquittal and discharge of the United States Treasury Department.

"§ 28A-15.8. State income tax returns. — Upon the determination by the Commissioner of Revenue of North Carolina of an overpayment of income tax by any married person, any refund of the tax by reason of such overpayment, if not in excess of two hundred dollars (\$200.00) exclusive of interest, shall be the sole and separate property of the surviving spouse, and said Commissioner of Revenue may pay said sum directly to such surviving spouse, and such payment to the extent thereof shall operate as a complete acquittal and discharge of the Commissioner of Revenue.

"§ 28A-15.9 Excess funds. — If the amount of any refund exceeds the sums specified in G.S. 25A-15.6, G.S. 28A-15.7 or G.S. 28A-15.8, the sums specified therein and one-half of any additional sums shall be the sole and separate property of the surviving spouse. The remaining one-half of such additional sums shall be the property of the estate of the decedent spouse.

"§ 28A-15.10. Assets of decedents estate for limited purposes. — (a) When needed to satisfy claims against a decedent's estate, assets may be acquired by a personal representative or collector from the following sources:

- (1) Tentative trusts created by the decedent in savings accounts for other persons;
- (2) Gifts causa mortis made by the decedent;
- (3) Joint deposit accounts with right of survivorship created by decedent pursuant to the provisions of G.S. 41-2.1 or otherwise; and joint tenancies with right of survivorship created by decedent in corporate stocks or other investment securities.

Such assets shall be acquired solely for the purpose of satisfying such claims, however, and shall not be available for distribution to heirs or devisees.

(b) Where there are not sufficient personal and real assets of the decedent to satisfy all the debts and other claims against his estate, the personal representative shall have the right to sue for and recover any and all personal property or real property, or interest therein, which the decedent may in any manner have transferred or conveyed with intent to hinder, delay, or defraud his creditors, and any personal property or real property, or interest therein, so recovered shall constitute assets of the estate in the hands of the personal representative for the payment of debts and other claims against the estate of the decedent. But if the alienee has sold the personal property or real property, or interest therein, so fraudulently acquired by him from the decedent to a bona fide purchaser for value without notice of the fraud, then such personal property or real property, or interest therein, may not be recovered from such bona fide purchaser but the fraudulent alienee shall be liable to the personal representative for the value of the personal property or real property, or interest therein, so acquired and disposed of to a bona fide purchaser. If the whole recovery from the fraudulent alienee shall not be necessary for the payment of the debts and other claims against the estate of the decedent, the surplus shall be returned to such fraudulent alienee or his assigns.

(c) Where there has been a recovery in an action for wrongful death, the same shall not be applied to the payment of debts and other claims against the estate of decedent or devisees, except as to the payment of reasonable burial and funeral expenses and reasonable hospital and medical expenses incident to the injury resulting in death and as limited and provided in G.S. 28-18.2.

"§ 28A-15.11. Debt due from personal representative not discharged by appointment. — The appointment of any person as personal representative does not discharge any debt or demand due from such person to the decedent.

"§ 28A-15.12. Examination of persons or corporations believed to have possession of property of decedent. — (a) Whenever a personal representative or collector makes oath or affirmation before the clerk of superior court of the county where the party to be examined

resides or does business that he has reasonable ground to believe, setting forth the grounds of his belief, that any person, firm or corporation has in his or its possession any property of any kind belonging to the estate of his decedent, the clerk shall issue a notice to be served upon the person or any member of the firm or officer, agent or employee of the firm or corporation designated in the affidavit, to appear before the clerk at his office at a time fixed in the notice, not less than three days after the issuance of the notice, and be examined under oath by the personal representative or collector or his attorney concerning the possession of such property. If upon examination the clerk of superior court finds that the person examined or the firm or corporation for which he works has in his or its possession any property belonging solely to the decedent, and fails to show any satisfactory reason for retaining possession of the property, the clerk shall issue an order requiring the person, firm or corporation forthwith to deliver the property to said personal representative or collector and may enforce compliance with the order by proceedings as for contempt of court: Provided, that in the case of a firm or corporation, whenever any person other than a partner or executive officer of such firm or corporation is examined, no such order shall be made until at least three days after service of notice upon a partner or executive officer of such firm or corporation to show cause why such order should not be made.

(b) Any person aggrieved by the order of the clerk of superior court may, within five days, appeal to the judge holding the next session of superior court of the county after the order is made or to the resident judge of the district, but as a condition precedent to his appeal he shall give a justified bond in a sum at least double the value of the property in question, conditioned upon the safe delivery of the property and the payment of damages for its detention, to the personal representative or collector in the event that the order of the clerk should be finally sustained. When the bond is executed and delivered to the court, no attachment as for contempt shall be served upon the appealing party and any contempt order theretofore issued shall be stayed; but if the appellant fails to have his appeal heard at the next session of superior court held in his county, or by the resident judge of the district within 30 days after giving notice, the appeal shall be deemed abandoned, and the stay of any contempt order theretofore issued shall terminate.

(c) The party against whom the final judgment is rendered shall be adjudged to pay the costs of the proceedings hereunder.

(d) The remedies provided in this section shall not be exclusive, but shall be in addition to any remedies which are now or may hereafter be provided.

"Article 16.

"Sales or Leases of Personal Property.

"§ 28A-16.1. Sales or leases without court order. — (a) A personal representative has the power to sell or lease personal property of the decedent without a court order at either a public or private sale.

(b) A personal representative who sells or leases personal property of the decedent without a court order is not required to file a special report or have the transaction confirmed by the clerk of superior court, or to follow any of the procedure set forth in Article 29A of Chapter 1 of the General Statutes, entitled 'Judicial Sales', but shall include in his next account, either annual or final, a record of the receipts and disbursements incident to the transaction.

"§ 28A-16.2. Sales or leases by court order. — (a) All sales or leases of personal property of the decedent by a collector shall be made only upon order obtained, by motion, from the clerk of superior court.

(b) A personal representative may, if he so desires, request the clerk of superior court to issue to him an order to sell or lease personal property of the decedent.

(c) Sales or leases of personal property of the decedent held pursuant to court order shall be conducted as provided in Article 29A of Chapter 1 of the General Statutes, entitled 'Judicial Sales'.

(d) A personal representative may, for his own benefit, purchase or lease personal property belonging to the decedent at a public sale conducted under an order of the clerk of superior court, if the transaction is reported to the clerk of superior court and confirmed by him.

"§ 28A-16.3. Sales of household furnishings. — If the decedent is survived by a spouse, no sale or lease shall be made of the household furnishings in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse, if such dwelling house was owned by the deceased spouse at the time of his or her death, until the expiration of the time limits set forth in G.S. 29-30(c) for the filing by the surviving spouse of an election in regard to the property of the decedent.

"Article 17.

"Sales, Leases or Mortgages of Real Property.

"§ 28A-17.1. Sales of real property. — Pursuant to authority contained in G.S. 28A-15.1 the personal representative may, at any time, apply to the clerk of superior court of the county where the decedent's real property or some part thereof is situated, by petition, to sell such real property for the payment of debts and other claims against the decedent's estate.

"§ 28A-17.2. Contents of petition for sale. — The petition to sell real property shall include:

- (1) A description of the real property and interest therein sought to be sold;
- (2) The names, ages and addresses, if known, of the devisees and heirs of the decedent.
- (3) A statement that the personal representative has determined that it is in the best interest of the administration of the estate to sell the real property sought to be sold.

"§ 28A-17.3. Petition for partition. — When it is alleged that the real property of the decedent sought to be sold consists in whole or in part of an undivided interest in real property, the personal representative of the decedent may include, in the petition to sell the real property for the payment of debts and other claims against the decedent's estate, a request for partition of the lands sought to be sold.

"§ 28A-17.4. Heirs and devisees necessary parties. — No order to sell real property shall be granted until the heirs or devisees of the decedent have been made parties to the proceeding by service of summons in the manner required by law. Upon such service, the court shall appoint a guardian ad litem for heirs or devisees who are unknown or whose addresses are unknown, and summons shall issue to him as such. The guardian ad litem shall file answer for such heirs or devisees and defend for them, and he shall be paid such sum as the court may fix, to be paid as costs of the proceeding.

"§ 28A-17.5. Property subject to sale; conveyance by deceased in fraud of creditors. — The real property subject to sale under this Article shall include real property recovered from a fraudulent alienee pursuant to G.S. 28A-15.10(b).

"§ 28-17.6. Adverse claimant to be heard; procedure. — When the real property sought to be sold, or any interest therein, is claimed by another person, such claimant may be made a party to the proceeding, and in any event may become a party upon his own motion. When an issue of law or fact is joined between the parties, the procedure shall be as prescribed for other special proceedings.

"§ 28A-17.7. Order granted if petition not denied; public or private sale, procedure for sale. — If, by default or admission, the allegations in the petition are not controverted, the clerk of superior court may summarily order a sale. The procedure for the sale shall be as is provided in Article 29 A of Chapter 1 of the General Statutes, entitled 'Judicial Sales'. If it is made to appear to the clerk by petition and by satisfactory proof that it will be for the best interest of the estate to sell by private sale, the clerk may authorize a private sale in accordance with the provisions of G.S. 1-339.33 through G.S. 1-339.40.

"§ 28A-17.8. Under power in will, sales public or private. — Sales of real property made pursuant to authority given by will may be either public or private, unless the will otherwise

directs, and may be on such terms as in the opinion of the personal representative are most advantageous to those interested in the decedent's estate.

"§ 28A-17.9. Death of vendor under contract; representative to convey. — When any decedent has contracted to sell any real property and has given bond or other enforceable written contract to the purchaser to convey the same, his personal representative may execute and deliver a deed to such real property and such deed shall convey the title as fully as if it had been executed and delivered by the decedent. No deed shall be made unless the purchaser complies with the terms of the bond or other written contract. If the contract for conveyance requires the giving of a warranty deed, the deed given by the personal representative shall contain such warranties as required by the contract and the warranties shall be binding on the estate and not on the personal representative personally.

"§ 28A-17.10. Title in personal representative for estate; he or successor to convey. — When real property is conveyed to a personal representative for the benefit of the estate he represents, he or any successor personal representative may sell and convey it upon such terms as he may deem just and for the advantage of the estate. The procedure shall be as is provided in Article 29A of Chapter 1 of the General Statutes, entitled 'Judicial Sales'. If it is made to appear to the clerk of superior court by petition and by satisfactory proof that it will be for the best interest of the estate to sell by private sale, the clerk may authorize a private sale in accordance with the provisions of G.S. 1-339.33 through G.S. 1-339.40.

"§ 28A-17.11. Personal representative may lease or mortgage. — In lieu of asking for an order of sale of real property, the personal representative may request the clerk of superior court to issue to him an order to lease or to mortgage real property of the decedent. The clerk of superior court is authorized to issue an order to lease or mortgage on such terms as he deems to be in the best interest of the estate.

"§ 28A-17.12. Sale, lease or mortgage of real property by heirs or devisees. — (a) If the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14.1 occurs within two years after the death of the decedent:

- (1) All sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent made after the death of the decedent and before the first publication or posting of the general notice to creditors are void as to creditors and personal representatives; and
- (2) All sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent made after such first publication or posting and before approval of the final account shall be void as to creditors and personal representatives unless the personal representative joins in the sale, lease or mortgage and the transaction is approved by the clerk of superior court. Approval of the clerk must appear in the deed, lease or mortgage, accompanied by a statement that he has made a finding that the transaction will not prejudice the payment of any valid claim against the estate.

(b) If the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14.1 does not occur within two years after the death of the decedent, all sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent shall be valid as to creditors and personal representatives of the decedent.

"§ 28A-17.13. Prior validating acts. — Chapter 70 of the Public Laws of 1923, Chapter 48 of the Public Laws of 1925, Chapter 146 of the Public Laws of 1931, and Chapters 31 and 381 of the Public Laws of 1935, all validating certain prior sales of real property by executors or administrators and heretofore codified as G.S. 28-100 through 28-104, shall remain in full force and effect, though no longer carried forward as part of the General Statutes.

"Article 18.

"Actions and Proceedings.

"§ 28A-18.1. **Survival of actions to and against personal representative.** — (a) Upon the death of any person, all demands whatsoever, and rights to prosecute or defend any action or special proceeding, existing in favor of or against such person, except as provided in subsection (b) hereof, shall survive to and against the personal representative or collector of his estate.

(b) The following rights of action in favor of a decedent do not survive:

- (1) Causes of action for libel and for slander, except slander of title;
- (2) Causes of action for false imprisonment;
- (3) Causes of action where the relief sought could not be enjoyed, or granting it would be nugatory after death.

"§ 28A-18.2. **Death by wrongful act of another, recovery not assets.** — (a) When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured person had lived, have entitled him to an action for damages therefor, the person or corporation that would have been so liable, and his or their personal representatives or collectors, shall be liable to an action for damages, to be brought by the personal representative or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, except as to burial expenses of the deceased, and reasonable hospital and medical expenses not exceeding five hundred dollars (\$500.00) incident to the injury resulting in death; provided that all claims filed for such services shall be approved by the clerk of the superior court and any party adversely affected by any decision of said clerk as to said claim may appeal to the superior court in term time, but shall be disposed of as provided in the Intestate Succession Act.

(b) Damages recoverable for death by wrongful act include:

- (1) Expenses for care, treatment and hospitalization incident to the injury resulting in death;
- (2) Compensation for pain and suffering of the decedent;
- (3) The reasonable funeral expenses of the decedent;
- (4) The present monetary value of the decedent to the persons entitled to receive the damages recovered, including but not limited to compensation for the loss of the reasonably expected:
 - a. Net income of the decedent,
 - b. Services, protection, care and assistance of the decedent, whether voluntary or obligatory, to the persons entitled to the damages recovered,
 - c. Society, companionship, comfort, guidance, kindly offices and advice of the decedent to the persons entitled to the damages recovered;
- (5) Such punitive damages as the decedent could have recovered had he survived, and punitive damages for wrongfully causing the death of the decedent through maliciousness, wilful or wanton injury, or gross negligence;
- (6) Nominal damages when the jury so finds.

(c) All evidence which reasonably tends to establish any of the elements of damages included in subsection (b), or otherwise reasonably tends to establish the present monetary value of the decedent to the persons entitled to receive the damages recovered, is admissible in an action for damages for death by wrongful act.

(d) In all actions brought under this section the dying declarations of the deceased shall be admissible as provided for in G.S. 8-51.1.

"§ 28A-18.3. **To sue or defend in representative capacity.** — All actions and proceedings brought by or against personal representatives or collectors upon any cause of action or right to

which the estate of the decedent is the real party in interest, must be brought by or against them in their representative capacity.

"§ 28A-18.4. **Service on or appearance of one binds all.** — In actions against personal representatives or collectors, they are all to be considered as one person, representing the decedent; and if the summons is served on one or more, but not all, the plaintiff may proceed against those served, and if he recovers, judgment may be entered against all.

"§ 28A-18.5. **When creditors may sue on claim; execution in such action.** — An action may be brought by a creditor against the personal representative or collector on a demand at any time after it is due, but no execution shall issue against the personal representative or collector on a judgment therein against him without leave of the court, upon notice of 20 days and upon proof that the defendant has refused to pay such judgment or its ratable part, and such judgment shall be a lien on the property of the estate of the decedent only from the time of such leave granted.

"§ 28A-18.6. **Service by publication on executor without bond.** — Whenever process may issue against an executor who has not given bond, and the same cannot be served upon him by reason of his absence or concealment, service of such process may be made by publication in the manner prescribed in other civil actions.

"§ 28A-18.7. **Execution by successor in office.** — Any personal representative or collector may have execution issued on any judgment recovered by any person who preceded him in the administration of the estate, or by the decedent, in the same cases and the same manner as the original plaintiff might have done.

"§ 28A-18.8. **Action to continue, though letters revoked.** — In case the letters of a personal representative or collector are revoked, pending an action to which he is a party, the adverse party may, notwithstanding, continue the action against him in order to charge him personally. If such party does not elect so to do, within six months after notice of such revocation, the action may be continued against the successor of the personal representative or collector in the administration of the estate, in the same manner as in case of death.

"Article 19.

"Claims Against the Estate.

"§ 28A-19.1. **Manner of presentation of claims.** — Claims against a decedent's estate may be presented as follows:

(a) The claimant may deliver or mail to the personal representative or collector a written statement of any claim indicating its basis, the name and address of the claimant, and the amount claimed. Such claim will be deemed presented upon its being received by the personal representative or collector, but if the personal representative or collector so elects, he may demand any or all of the following prior to taking action on the claim:

- (1) If the claim is not yet due, that the date when it will become due be stated;
- (2) If the claim is contingent or unliquidated, that the nature of the uncertainty be stated;
- (3) If the claim is secured, that the security be described.

(b) Any action commenced against a personal representative or collector as such after the death of the decedent is considered a claim duly presented against the estate from the time of serving the original process on the personal representative or collector.

(c) Any action pending against any person at the time of his death, which, at law, survives against the personal representative or collector is considered a claim duly presented against the estate from the time substitution of the personal representative or collector for the deceased defendant, or motion therefor, is made.

"§ 28A-19.2. **Affidavit of claim may be required** — Upon any claim being presented against the estate in the manner prescribed in G.S. 28A-19.1(a), the personal representative or collector may require the affidavit of the claimant or other satisfactory evidence that such claim is justly due, that no payments have been made thereon, and that there are no offsets against the same,

to the knowledge of the claimant; or if any payments have been made, or any offsets exist that their nature and amount be shown by the evidence or stated in the affidavit.

"§ 28A-19.3. Limitations on presentation of claims. — (a) All claims, except contingent claims based on any warranty made in connection with the conveyance of real estate, against a decedent's estate which arose before the death of the decedent, including claims of the United States and the State of North Carolina and subdivisions thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, secured or unsecured, founded on contract, tort, or other legal basis, which are not presented to the personal representative or collector pursuant to G.S. 28A-19.1 within six months after the day of the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14.1 are forever barred against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent.

(b) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the United States and the State of North Carolina and subdivisions thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, secured or unsecured, founded on contract, tort, or other legal basis are forever barred against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent unless presented to the personal representative or collector as follows:

- (1) A claim based on a contract with the personal representative or collector, within six months after performance by the personal representative or collector is due;
- (2) Any claim other than a claim based on a contract with the personal representative or collector, within six months after the claim arises.

(c) No claim shall be barred by the statute of limitations which was not barred thereby at the time of the decedent's death, if the claim is presented within the period provided by subsection (a) hereof.

(d) All claims of creditors upon whom there has been personal service of notice as provided in G.S. 28A-14.3 are forever barred unless presented to the personal representative or collector within three months from the date of such service. Nothing herein contained, however, shall be construed as extending the period provided by subsections (a) and (b) hereof.

(e) Unless notice of actions or special proceedings pending against a decedent at the time of his death and surviving under G.S. 28A-18.1 is presented to the personal representative or collector within six months after the day of the first publication or posting of the general notice to creditors as provided in G.S. 28A-14.1, no recovery may be had upon any judgment obtained in any such action or proceeding.

(f) All claims barrable under the provisions of subsections (a) and (b) hereof shall, in any event, be barred if the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14.1 does not occur within three years after the death of the decedent.

(g) Nothing in this section affects or prevents any action or proceeding to enforce any mortgage, deed of trust, pledge, lien (including judgment lien), or other security interest upon any property of the decedent's estate, but no deficiency judgment will be allowed if the provisions of this section are not complied with.

(h) The word 'claim' as used in this section does not apply to claims of heirs or devisees to their respective shares or interests in the decedent's estate in their capacity as such heirs or devisees.

"§ 28A-19.4. Payment of claims and charges before expiration of six months period. — As soon as the personal representative or collector is possessed of sufficient means over and above the other costs of administration, he shall pay the year's allowances in the amounts and in the manner prescribed in G.S. 30-15 to G.S. 30-33. Prior to the expiration of six months after the day of the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14.1, the personal representative or collector may pay such other claims and charges as he

deems in the best interest of the estate if the total assets are sufficient to pay all claims and charges against the estate.

"§ 28A-19.5. Contingent claims. — If a contingent or unliquidated claim becomes absolute before the distribution of the estate of the decedent, it shall be paid in the same manner as absolute claims of the same class. In other cases the clerk of superior court may provide for the payment of contingent or unliquidated claims in any one of the following ways:

- (1) The creditor and the personal representative or collector may determine, by agreement, arbitration, or compromise, the value of the contingent or unliquidated claim, according to its probable present worth, and with the approval of the clerk of superior court, it may be allowed and paid in the same manner as an absolute claim.
- (2) The clerk of superior court may order the personal representative or collector to retain sufficient funds to pay the claim if and when the same becomes absolute, and order distribution of the balance of the estate.
- (3) The clerk of superior court may order distribution of the estate as though the contingent or unliquidated claim did not exist, but the heirs and devisees of the estate of the decedent are liable to the creditor to the extent of the estate received by them, if the contingent or unliquidated claim thereafter becomes absolute; and the court may require such heirs and devisees to give bond for the performance of their liability to the contingent or unliquidated creditor.
- (4) Such other method as the clerk of superior court may order.

"§ 28A-19.6. Order of payment of claims. — After payment of costs and expenses of administration, the claims against the estate of a decedent must be paid in the following order:

First class. Claims which by law have a specific lien on property to an amount not exceeding the value of such property.

Second class. Funeral expenses to the extent of six hundred dollars (\$600.00).

This limitation shall not include cemetery lot or gravestone. The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable funeral expenses which may be incurred; nor shall the preferential limitation of payment in the amount of six hundred dollars (\$600.00) be diminished by any Veterans Administration, Social Security or other federal governmental benefits awarded to the estate of the decedent or to his or her beneficiaries.

Third class. All dues, taxes, and other claims with preference under the laws of the United States.

Fourth class. All dues, taxes, and other claims with preference under the laws of the State of North Carolina and its subdivisions.

Fifth class. Judgments of any court of competent jurisdiction within the State, docketed and in force, to the extent to which they are a lien on the property of the decedent at his death.

Sixth class. Wages due to any employee employed by the decedent, which claim for wages shall not extend to a period of more than 12 months next preceding the death; or if such employee was employed for the year current at the decease, then from the time of such employment; for medical services within the 12 months preceding the decease; for drugs and all other medical supplies necessary for the treatment of such decedent during the last illness of such decedent, said period of last illness not to exceed 12 months.

Seventh class. All other claims.

"§ 28A-19.7. Satisfaction of claims other than by payment. — Notwithstanding any provision of law to the contrary,

- (1) If a decedent was liable in person at the time of his death for the payment or satisfaction of any claim or the performance, satisfaction, or discharge of any liability or obligation, whether joint or several, primary or secondary,

- direct or contingent, or enforceable in any other manner or form whatsoever,
or
- (2) If only the property of a decedent or some part thereof was liable at the time of his death for the payment of satisfaction of any claim or the performance, satisfaction, or discharge of any liability or obligation, whether joint or several, primary or secondary, direct or contingent, or enforceable in any other manner or form against the property of the decedent but not against him or his estate as a personal liability, and
 - (3) If any person other than the personal representative of the decedent is willing to assume the liability of the decedent and of his estate or to receive or accept property of the decedent subject to such liability in cases where the decedent was not personally liable and the creditor, obligee, or other person for whose benefit such liability exists is willing to accept an agreement with that effect and to discharge the personal representative of the decedent and the estate of the decedent from the payment, satisfaction, or discharge of such liability, and
 - (4) If such creditor, obligee, or other person for whose benefit such liability exists and the person assuming the liability or the person receiving or accepting property of the decedent subject to such liability shall execute, acknowledge, and deliver in the form and manner required for deeds conveying real property in North Carolina, an agreement between themselves as to such assumption of liability or the receipt or acceptance of property of the decedent subject to such liability which shall contain a release, as hereinafter defined, discharging the personal representative of the decedent and his estate from the payment, satisfaction, or discharge of the liability, and thereafter the said creditor, obligee, or other person for whose benefit such liability exists shall have no remedy for the enforcement thereof except against the person assuming it or against the property subject to it as provided in the said agreement; then upon the filing with the clerk of superior court having jurisdiction over the estate and the personal representative of one duplicate original of the said agreement, or of a certified copy thereof if it is a duly recorded instrument, the same shall be accepted in the same manner as a voucher showing payment or discharge of the said liability in the accounts of the personal representative of the decedent.

The word 'person' as used in this section shall include one or more natural persons, corporations, partnerships, or entities having the power to own property or to make contracts in regard thereto. The word 'release' as used in this section shall include a covenant not to sue in any case in which an unqualified release or discharge of one obligee would discharge another, and if the liability involved is a negotiable instrument or other instrument transferable to a holder in due course, such release shall not be effective unless notice thereof is endorsed on the instrument involved, dated, and signed by the creditor or the holder of the indebtedness or person for whose benefit the property is encumbered.

"§ 28A-19.8. Funeral expenses of decedent. — Funeral expenses of a decedent shall be considered as an obligation of the estate of the decedent and the decedent's estate shall be primarily liable therefor. The provisions of this section shall not affect the application of G.S. 28A-19.6.

"§ 28A-19.9. Gravestone authorized. — It is lawful for personal representatives to provide suitable gravestones to mark the graves of their testators or intestates, and to pay for the cost of

erecting the same and the cost thereof shall be paid as funeral expenses and credited as such in final accounts. The costs thereof shall be in the sound discretion of the personal representative, having due regard to the value of the estate and to the interests of creditors and needs of the surviving spouse and the heirs and devisees of the estate. Where the personal representative desires to spend more than four hundred dollars (\$400.00) for such purpose, and the will does not grant specific authority to the personal representative for such expenditures in excess of four hundred dollars (\$400.00), he shall file his petition before the clerk of the court, and such order as will be made by the court shall specify the amount to be expended for such purpose. Provided, however, that if the net estate is of a value in excess of twenty-five thousand dollars (\$25,000), the personal representative may, in his discretion, expend not more than eight hundred dollars (\$800.00) for this purpose without securing the order of the court required herein. If the estate is of a value in excess of twenty-five thousand dollars (\$25,000) and the personal representative desires to spend more than eight hundred dollars (\$800.00) for such purpose, and the will does not grant specific authority for such expenditure he shall file his petition and secure the order of the court herein required before expending funds for such purpose. However, in no event may more than eight hundred dollars (\$800.00) be accounted as gravestone marker cost to be credited as a funeral expense in the final accounts.

"§ 28A-19.10. Perpetual care of cemetery lot. — It shall be lawful for a personal representative to provide for perpetual care for the lot upon which is located the grave of his testator or intestate, and the cost thereof shall be paid and credited as such in final accounts: Provided, that the provisions of this section shall be applicable to an interment made in a cemetery authorized by law to operate as a perpetual care cemetery or association, and the cost thereof shall be in the sound discretion of the personal representative having due regard to the value of the estate and to the interest of the surviving spouse and the heirs and devisees of the estate. Provided, where the personal representative desires to spend more than two hundred fifty dollars (\$250.00) for such purpose, and the will does not grant specific authority to the personal representative for such expenditure in excess of two hundred fifty dollars (\$250.00), he shall file his petition before the clerk of the superior court and such order as will be made by the court shall specify the amount to be expended for such purpose.

"§ 28A-19.11. Pleading statute of limitations. — When claims are not barred pursuant to G.S. 28A-19.3, it shall be within the discretion of the personal representative or collector acting in good faith to determine whether or not any applicable statute of limitations shall be pleaded to bar a claim which he believes to be just. His admission of such claim or his decision not to plead the statute in an action brought on the claim shall, in the absence of any showing of collusion or bad faith, be binding on all persons interested in the estate.

"§ 28A-19.12. Claims due representative not preferred. — No property or assets of the decedent shall be retained by the personal representative or collector in satisfaction of his own claim, in preference to others of the same class; but such claim must be established upon the same proof and paid in like manner and order as required by law in case of other debts.

"§ 28A-19.13. No preference within class. — No personal representative or collector shall give to any claim any preference whatever, either by paying it out of its class or by paying thereon more than a pro rata proportion in its class.

"§ 28A-19.14. Claims not due rebated. — Claims owed by the estate but not yet due may be paid by the personal representative on a rebate of interest thereon for the time unexpired.

"§ 28A-19.15. Disputed claim may be referred. — If the personal representative doubts the justness of any claim so presented, he may enter into an agreement, in writing, with the claimant, to refer the matter in controversy, whether the same be of a legal or equitable nature, to one or more disinterested persons, not exceeding three, whose proceedings shall be the same in all respects as if such reference had been ordered in an action. Such agreement to refer, and the award thereupon, shall be filed in the clerk's office where the letters were granted, and shall be a lawful voucher for the personal representative. The same may be impeached in any

proceeding against the personal representative for fraud therein: Provided, that the right to refer claims under this section shall extend to claims in favor of the estate as well as those against the estate.

"§ 28A-19.16. Disputed claim not referred, barred in three months. — If a claim is presented to and rejected by the personal representative or collector, and not referred as provided in G.S. 28A-19.15, the claimant must, within three months, after due notice in writing of such rejection, or after some part of the claim becomes due, commence an action for the recovery thereof, or be forever barred from maintaining an action thereon.

"§ 28A-19.17. No lien by suit against representative.— No lien shall be created by the commencement of a suit against a personal representative or collector.

"§ 28A-19.18. When costs against representative allowed. — No costs shall be recovered in any action against a personal representative or collector unless it appears that payment was unreasonably delayed or neglected, or that the defendant refused to refer the matter in controversy, in which case the court may award such costs against the defendant personally, or against the estate, as may be just.

"Article 20.

"Inventory.

"§ 28A-20.1. Inventory within three months. — Every personal representative and collector, within three months after his qualification, shall return to the clerk, on oath, a just, true and perfect inventory of all the real and personal property of the deceased, which have come to his hands, or to the hands of any person for him, which inventory shall be signed by him and be recorded by the clerk. He shall also return to the clerk, on oath, within three months after each sale made by him, a full and itemized account thereof, which shall be signed by him and recorded by the clerk.

"§ 28A-20.2. Compelling the inventory. — (a) If the inventory specified in G.S. 28A-20.1 is not filed as prescribed, the clerk of superior court must issue an order requiring the personal representative or collector to file it within the time specified in the order, not less than 20 days, or to show cause why he should not be removed from office. If, after due service of the order, the personal representative or collector does not on or before the return day of the order file such inventory or obtain further time in which to file it, the clerk may remove him from office or may issue an attachment against him for a contempt and commit him until he files said inventory report.

(b) The personal representative or collector shall be personally liable for the costs of any proceeding incident to his failure to file the inventory required by G.S. 28A-20.1. Such costs shall be taxed against him by the clerk of superior court and may be collected by deduction from any commissions which may be found due the personal representative or collector upon final settlement of the estate.

"§ 28A-20.3. Supplemental inventory. — (a) Whenever any property not included in the original inventory report becomes known to any personal representative or collector or whenever the personal representative or collector learns that the valuation or description of any property or interest therein indicated in the original inventory is erroneous or misleading, he shall prepare and file with the clerk of superior court a supplementary inventory in the same manner as prescribed for the original inventory. The clerk shall record the supplemental report with the original inventory.

(b) The making of the supplemental inventory shall be enforced in a manner specified in G.S. 28A-20.2.

"§ 28A-20.4. Employment of appraisers. — A personal representative or collector may, but shall not be required to, employ qualified and disinterested appraisers to assist in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds

of assets. The name and address of any appraiser shall be indicated in the inventory with the asset or assets he appraised.

"Article 21.

"Accounting.

"§ 28A-21.1. **Annual accounts.** — If an extension of time to file the final account has been granted by the clerk of superior court pursuant to G.S. 28A-21.2, the personal representative or collector shall, within 30 days after the expiration of one year from the date of his qualification and annually, so long as any of the property of the estate remains in his control, custody or possession, file in the office of the clerk of superior court an inventory and account, 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. He must produce vouchers for all payments. The clerk of superior court may examine, under oath, such accounting party, or any other person, concerning the receipts, disbursements or any other matter relating to the estate. He must carefully review and audit such account and, if he approves the account, he must endorse his approval thereon, which shall be prima facie evidence of correctness, and cause the same to be recorded.

"§ 28A-21.2. **Final accounts.** — (a) Unless the time for filing the final account has been extended by the clerk of superior court, the personal representative or collector must file his final account for settlement within one year of his qualification. He must produce vouchers for all payments. With the approval of the clerk of superior court, such account may be filed voluntarily at any time. In all cases, the accounting shall be reviewed, audited and recorded by the clerk of superior court in the manner prescribed in G.S. 28A- 21.1.

(b) Except as provided in subsection (a), upon the expiration of six months after the day of the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14.1, if all of the debts and other claims against the estate of the decedent duly presented and legally owing have been paid in the case of a solvent estate or satisfied pro rata according to applicable statutes in the case of an insolvent estate, the personal representative or collector may file his final account to be reviewed, audited and recorded by the clerk of superior court. Nothing in this subsection shall be construed as limiting the right of the surviving spouse or minor children to file for allowances under G.S. 30-15 through 30-18 and the right of a surviving spouse to file for property rights under G.S. 29-30.

"§ 28A-21.3. **What accounts must contain.** — Accounts filed with the clerk of superior court pursuant to G.S. 28A-21.1, signed and under oath, shall contain:

- (1) The period which the account covers and whether it is an annual accounting or a final accounting;
- (2) The amount and value of the property of the estate according to the inventory and appraisal or according to the next previous accounting, the amount of income and additional property received during the period being accounted for, and all gains from the sale of any property or otherwise;
- (3) All payments, charges, losses, and distributions;
- (4) The property on hand constituting the balance of the account, if any; and
- (5) Such other facts and information determined by the clerk to be necessary to an understanding of the account.

"§ 28A-21.4. **Clerk may compel account.** — If any personal representative or collector fails to account as directed in G.S. 28A-9.3, G.S. 28A-21.1 or G.S. 28A-21.2 or renders an unsatisfactory account, the clerk of superior court shall, upon his own motion or upon the request of one or more creditors of the decedent or other interested party, promptly order such personal representative or collector to render a full satisfactory account within 20 days after service of the order. If, after due service of the order, the personal representative or collector does not on or before the return day of the order file such account, or obtain further time in

which to file it, the clerk may remove him from office or may issue an attachment against him for a contempt and commit him until he files said account.

"§ 28A-21.5. **Vouchers presumptive evidence.** — Vouchers, without other proof, are presumptive evidence of disbursement, unless impeached. If lost, the accounting party must, if required, make oath to that fact setting forth the manner of loss, and state the contents and purport of the voucher.

"Article 22.

"Distribution.

"§ 28A-22.1. **Scheme of distribution; testate and intestate estates.** — After the payment of costs of administration, taxes and other valid claims against the decedent's estate, the personal representative shall distribute the remaining assets of the estate in accordance with the terms of decedent's valid probated will or the provisions of Chapter 29 of the General Statutes or as otherwise lawfully authorized.

"§ 28A-22.2. **Shares of after-born and after-adopted children.** — The share of an after-born or after-adopted child, as provided by G.S. 29-9 and G.S. 31-5.5, shall be allotted to him out of any undeviseed real or personal property, or out of both, if there is enough such undeviseed property for that purpose. If there is no undeviseed real or personal property, or if there is not enough, then the whole of the child's share, or the deficiency, shall be made up from the deviseed real or personal property, or from both. The portion contributed by a devisee shall bear the same ratio to his devise as the after-born or after-adopted child's share bears to the net estate.

"§ 28A-22.3. **Special proceeding against unknown heirs of decedent before distribution of estate.** — If there may be heirs, born or unborn, of the decedent, other than those known to the personal representative and whose names and residences are unknown, before distributing such estate the personal representative is authorized to institute a special proceeding before the clerk of superior court for the purpose of determining who are the heirs of the decedent. All unknown heirs of the decedent shall be made parties thereto and shall be served with summons by publication as provided by G.S. 1A-1, Rule 4. Upon such service being had, the court shall appoint some discreet person to act as guardian ad litem for said unknown heirs and summons shall issue as to such guardian ad litem. Said guardian ad litem shall file answer on behalf of said unknown heirs and he may be paid for his services such sum as the court may fix, to be paid as other costs out of the estate. Upon the filing of the answer by said guardian ad litem all such unknown heirs shall be before the court for the purposes of the proceeding to the same extent as if each had been personally served with summons. Any judgment entered by the court in such proceeding shall be as binding upon said unknown heirs as if they were personally before the court and any payment or distribution made by the personal representative under orders of the court shall have the effect of fully discharging such personal representative and any sureties on his official bond to the full extent of such payment or distribution as ordered.

"§ 28A-22.4. **Distribution to nonresident trustee only upon appointment of process agent.** — (a) No assets of the estate of a decedent subject to administration in this State shall be delivered or transferred to a trustee of a testamentary trust or an inter vivos trust who is a nonresident of this State who has not appointed a resident agent for the service of civil process for actions or proceedings arising out of the administration of the trust with regard to such property.

(b) If property is delivered or transferred to a trustee in violation of this section, process may be served outside this State or by publication, as provided by G.S. 1A-1, Rule 4, and the courts of this State shall have the same jurisdiction over the trustee as might have been obtained by service upon a properly appointed process agent. The provisions of this section with regard to jurisdiction shall be in addition to other means of obtaining jurisdiction permissible under the laws of this State.

"§ 28A-22.5. Distribution of assets in kind in satisfaction of bequests and transfers in trust for surviving spouse. — Whenever under any will or trust indenture the executor, trustee or other fiduciary is required to, or has an option to, satisfy a bequest or transfer in trust to or for the benefit of the surviving spouse of a decedent by a transfer of assets of the estate or trust in kind at the values as finally determined for federal estate tax purposes, the executor, trustee or other fiduciary shall, in the absence of contrary provisions in such will or trust indenture, be required to satisfy such bequest or transfer by the distribution of assets fairly representative of the appreciation or depreciation in the value of all property available for distribution in satisfaction of such bequest or transfer.

"§ 28A-22.6. Agreements with taxing authorities to secure benefit of federal marital deduction. — The executor, trustee, or other fiduciary having discretionary powers under a will or trust indenture with respect to the selection of assets to be distributed in satisfaction of a bequest or transfer in trust to or for the benefit of the surviving spouse of a decedent shall be authorized to enter into agreements with the Commissioner of Internal Revenue of the United States of America, and other taxing authorities, requiring the fiduciary to exercise the fiduciary's discretion so that cash and other properties distributed in satisfaction of such bequest or transfer in trust will be fairly representative of the net appreciation or depreciation in value on the date, or dates, of distribution of all property then available for distribution in satisfaction of such bequest or transfer in trust. Any such fiduciary shall be authorized to enter into any other agreement not in conflict with the express terms of the will or trust indenture that may be necessary or advisable in order to secure for federal estate tax purposes the appropriate marital deduction available under the Internal Revenue Laws of the United States of America and to do and perform all acts incident to such purpose.

"Article 23.

"Settlement.

"§ 28A-23.1. Settlement after final account filed.— When the personal representative or collector has paid or otherwise satisfied or provided for all claims against the estate, has distributed the remainder of the estate pursuant to G.S. 28A-22.1 and has filed his final account for settlement pursuant to G.S. 28A-22.5, if the clerk of superior court, after review of the personal representative's or collector's final account, approves the same, he shall enter an order discharging the personal representative or collector from further liability.

"§ 28A-23.2. Payment into court of fund due minor. — When any personal representative or collector holds property due a minor without a guardian and desires to file his petition for settlement, he may deliver the property to the clerk of superior court who shall invest upon interest or otherwise manage said property for the use of the minor or the clerk may proceed to appoint a guardian for the minor pursuant to the provisions of Chapter 33 of the General Statutes and then may deliver the property of the minor to the guardian.

"§ 28A-23.3. Commissions allowed personal representatives; representatives guilty of misconduct or default — (a) Personal representatives, testamentary trustees, collectors, or other fiduciaries shall be entitled to commissions to be fixed in the discretion of the clerk of superior court not to exceed five percent (5%) upon the amounts of receipts, including the value of all personal property when received, and upon the expenditures made in accordance with law, which commissions shall be charged as a part of the costs of administration and, upon allowance, may be retained out of the assets of the estate against creditors and all other persons claiming an interest in the estate. Provided, however, when the gross value of an estate is two thousand dollars (\$2,000) or less, the clerk of superior court is authorized and empowered to fix the commission to be received by the personal representative, testamentary trustee, collector or other fiduciary in an amount as he, in his discretion, deems just and adequate.

(b) In determining the amount of such commissions, both upon personal property received and upon expenditures made, the clerk of superior court shall consider the time, responsibility, trouble and skill involved in the management of the estate. Where real property

is sold to pay debts or legacies, the commission shall be computed only on the proceeds actually applied in the payment of debts or legacies.

(c) The clerk of superior court may allow commissions from time to time during the course of the administration, but the total commissions allowed shall be determined on final settlement of the estate and shall not exceed the limit fixed in this section.

(d) Nothing in this section shall be construed:

- (1) To prevent the clerk of the superior court from allowing reasonable sums for necessary charges and disbursements incurred in the management of the estate; or
- (2) To allow commissions on distribution of the shares of heirs or on distribution of shares of devisees; or
- (3) To abridge the right of any party interested in the administration of a decedent's estate to appeal an order of the clerk of superior court to a judge of superior court.

(e) No personal representative, testamentary trustee, collector or other fiduciary, who has been guilty of such default or misconduct in the due execution of his office resulting in the revocation of his appointment under the provisions of G.S. 28A-9.1, shall be entitled to any commission under the provisions of this section.

(f) For the purpose of computing commissions whenever any portion of the dividends, interest, rents or other amounts payable to a personal representative, trustee, collector or other fiduciary is required by any law of the United States or other governmental unit to be withheld for income tax purposes by the person, corporation, organization or governmental unit paying the same, the amount so withheld shall be deemed to have been received and expended.

"§ 28A-23.4. Counsel fees allowable to attorneys serving as representatives. — The clerk of superior court, in his discretion, is authorized and empowered to allow counsel fees to an attorney serving as a personal representative, testamentary trustee, collector, or other fiduciary (in addition to the commissions allowed him as such representative or fiduciary) where such attorney in behalf of the estate or trust he represents renders professional services, as an attorney, which are beyond the ordinary routine of administration and of a type which would reasonably justify the retention of legal counsel by any such representative or fiduciary not himself licensed to practice law.

"§ 28A-23.5. Reopening administration. — If, after an estate has been settled and the personal representative discharged, other property of the estate shall be discovered, or if it shall appear that any necessary act remains unperformed on the part of the personal representative, or for any other proper cause, the clerk of superior court, upon the petition of any person interested in the estate and without notice or upon such notice as he may direct, may order that said estate be reopened. He may reappoint the personal representative or appoint another personal representative to administer such property or perform such acts as may be deemed necessary. Unless the clerk of superior court shall otherwise order, the provisions of this Chapter as to an original administration shall apply to the proceedings had in the reopened administration; but no claim which is already barred can be asserted in the reopened administration.

"Article 24.

"Uniform Simultaneous Death Act.

"§28A-24.1. Disposition of property where no sufficient evidence of survivorship. — Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this Article.

"§ 28A-24.2. Beneficiaries of another person's disposition of property. — (a) Other than as provided in subsection (b) below, if property is so disposed of that the right of a beneficiary to

succeed to any interest therein is conditional upon his surviving another person and both persons die, and there is no sufficient evidence that the two have died other than simultaneously, the beneficiary shall be deemed not to have survived.

(b) If property is so disposed of that it is to be distributed among such members of a class as survive another person and there is no sufficient evidence that one or more members of the class and such other person died other than simultaneously, each member of the class so dying will be deemed to have survived such other person.

(c) If property is so disposed of that its disposition depends upon the time of death of two or more beneficiaries designated to take alternatively by reason of survivorship and there is no sufficient evidence that such beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are alternative beneficiaries who would have taken the whole property if they had survived and such portions shall be distributed respectively to each such beneficiary.

"§ 28A-24.3. Joint tenants or tenants by the entirety. — (a) Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously, the property shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(b) For the purpose of this section, the term 'joint tenants' includes owners of property held under circumstances which entitled one or more to the whole of the property on the death of the other or others.

"§ 28A-24.4. Insurance policies. — Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

"§ 28A-24.5. Article does not apply if decedent provides otherwise. — This Article shall not apply in the case of wills, living trusts, deeds, contracts of insurance, or any other situation wherein provision has been made for distribution of property different from the provisions of this Article, or wherein provision has been made for a presumption as to survivorship which results in a distribution of property different from that herein provided.

"§ 28A-24.6. Uniformity of interpretation. — This Article shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it.

"§ 28A-24.7. Short title.— This Article may be cited as the Uniform Simultaneous Death Act.

"Article 25.

"Small Estates.

"§ 28A-25.1. Property collectible by affidavit; contents of affidavit. — (a) When a decedent dies intestate leaving personal property, less liens and encumbrances thereon, not exceeding five thousand dollars (\$5,000) 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 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 stating:

- (1) The name and address of the affiant and the fact that he or she is an heir 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;
- (5) That the value of all the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed five thousand dollars (\$5,000);
- (6) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;
- (7) The names and addresses of those persons who are entitled, under the provisions of the Intestate Succession Act, to the personal property of the decedent and their relationship, if any, to the decedent; and
- (8) A description sufficient to identify each tract of real property owned by the decedent at the time of his death.

(b) Prior to the recovery of any assets of the decedent, a copy of the affidavit described in subsection (a) shall be filed in the office of the clerk of superior court of the county where the decedent had his domicile at the time of his death. The affidavit shall be filed by the clerk upon payment of the fee provided in G.S. 7A-308(a)(11), shall be indexed in the index to estates, and a copy thereof shall be mailed to the persons shown in the affidavit as entitled to the personal property.

(c) The presentation of an affidavit as provided in subsection (a) shall be sufficient to require the transfer to the affiant or his designee of the title and license to a motor vehicle registered in the name of the decedent owner; the ownership rights of a savings account or checking account in a bank in the name of the decedent owner; the ownership rights of a savings account or share certificate in a credit union, building and loan association, or savings and loan association in the name of the decedent owner; the ownership rights in any stock or security registered on the books of a corporation in the name of a decedent owner; or any other property or contract right owned by decedent at the time of his death.

"§ 28A-25.2. Effect of affidavit. — The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to an affidavit meeting the requirements of G.S. 28A-25.1(a) is discharged and released to the same extent as if he dealt with a duly qualified personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in an action brought for that purpose by or on behalf of the persons entitled thereto. The court costs and attorney's fee incident to the action shall be taxed against the person whose refusal to comply with the provisions of G.S. 28A-25.1(a) made the action necessary. The heir or creditor to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any duly qualified personal representative or collector of the decedent's estate or to any other person having an interest in the estate.

"§ 28A-25.3. Disbursement and distribution of personal property collected by affidavit. — (a) If there has been no personal representative or collector appointed by the clerk of superior court, the heir or creditor who has collected personal property of the decedent by affidavit pursuant to G.S. 28A-25.1 shall:

- (1) Disburse and distribute the same in the following order:
 - a. To the payment of the surviving spouse's year's allowance and the children's year's allowance assigned in accordance with G.S. 30-15 through G.S. 30-33;
 - b. To the payment of the debts and claims against the estate of the decedent in the order of priority set forth in G.S. 28A-19.6, or to the reimbursement of any person who has already made payment thereof;

- c. To the distribution of the remainder of the personal property to the persons entitled thereto under the provisions of the Intestate Succession Act; and
- (2) File an affidavit with the clerk of superior court that he has collected the personal property of the decedent and the manner in which he has disbursed and distributed the same.

(b) Nothing in this section shall be construed as changing the rule of G.S. 28A-15.1 and 28A-15.5 rendering both real and personal property, without preference or priority, available for the discharge of debts and other claims against the estate of the decedent.

"§ 28A-25.4. Clerk may compel compliance. — If any heir who has collected personal property of the decedent by affidavit pursuant to G.S. 28A-25.1 shall fail to make distribution or file affidavit as required by G.S. 28A-25.3, the clerk of superior court may, upon his own motion or at the request of any interested person, issue an attachment against him for a contempt and commit him until he makes proper distribution and files the affidavit.

"§ 28A-25.5. Subsequently appointed personal representative or collector. — Nothing in this Article shall preclude any interested person, including the affiant, from petitioning the clerk of superior court for the appointment of a personal representative or collector to conclude the administration of the decedent's estate. If such is done, the affiant who has been collecting personal property by affidavit shall cease to do so, shall deliver all assets in his possession to the personal representative, and shall render a proper accounting to the personal representative or collector.

"Article 26.

"Foreign Personal Representatives and Ancillary Administration.

"§ 28A-26.1. Domiciliary and ancillary probate and administration. — The domiciliary, or original, administration of the estates of all decedents domiciled in North Carolina at the time of death shall be under the jurisdiction of this State and of a proper clerk of superior court in this State, and the original probate of all wills of such persons shall be in this State. Any administration of the estate and any probate of a will of such decedents outside North Carolina shall be ancillary only. All assets, except real estate (but including proceeds from the sale of real estate), subject to ancillary administration in a jurisdiction outside North Carolina shall, to the extent such assets are not necessary for the requirements of such ancillary administration, be transferred and delivered by the ancillary personal representative to the duly qualified personal representative in this State for administration and distribution by the domiciliary personal representative, and the domiciliary personal representative in this State shall have the duty of collecting all such assets from the ancillary personal representative. The receipt of the domiciliary personal representative shall fully acquit the ancillary personal representative with respect to the assets covered thereby. The domiciliary personal representative in North Carolina shall have the exclusive right and duty to pay all federal and North Carolina taxes owed by the estate of such decedent and to make proper distribution of all assets including those collected from the ancillary personal representative.

"§ 28A-26.2. Payment of debt and delivery of property to domiciliary personal representative of a nonresident decedent without ancillary administration in this State. —

(a) At any time after the expiration of 60 days from the death of a nonresident decedent, any resident of this State indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt or deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary personal representative of the nonresident decedent upon being presented with a certified or exemplified copy of his letters of appointment and an affidavit made by or on behalf of the domiciliary personal representative stating:

- (1) The date of the death of the nonresident decedent;

- (2) That to the best of his knowledge no administration, or application or petition therefor, is pending in this State;
- (3) That the domiciliary personal representative is entitled to payment or delivery.

(b) Payment or delivery made in good faith on the basis of the proof of appointment as domiciliary personal representative of a nonresident decedent and an affidavit meeting the requirements of subsection (a) constitutes a release to the same extent as if payment or delivery had been made to an ancillary personal representative.

(c) Payment or delivery under this section shall not be made if a resident creditor of the nonresident decedent has notified the resident debtor of the nonresident decedent or the resident having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary personal representative of the nonresident decedent.

"§ 28A-26.3. Ancillary administration. — (a) Any domiciliary personal representative of a nonresident decedent upon the filing of a certified or exemplified copy of letters of appointment with the clerk of superior court who has venue under G.S. 28A-3.1 may be granted ancillary letters in this State notwithstanding that the domiciliary personal representative is a nonresident of this State or is a foreign corporation. If the domiciliary personal representative is a foreign corporation, it need not qualify under any other law of this State to authorize it to act as ancillary personal representative in the particular estate. If application is made for the issuance of ancillary letters to the domiciliary personal representative, the clerk of superior court shall give preference in appointment to the domiciliary personal representative unless the decedent shall have otherwise directed in a will.

(b) If, within 90 days after the death of the nonresident, or within 60 days after issue of domiciliary letters, should that be a shorter period, no application for ancillary letters has been made by a domiciliary personal representative, any person who could apply for issue of letters had the decedent been a resident may apply for issue of ancillary letters.

If it is known that there is a duly qualified domiciliary personal representative, the clerk of superior court shall send notice of such application, by registered mail, to that personal representative and to the appointing court. Such notice shall include a statement that, within 14 days after its mailing, the domiciliary personal representative may apply for the issue of ancillary letters with the preference specified in subsection (a) of this section; and that his failure to do so will be deemed a waiver, with the result that letters will be issued to another. Upon such failure, the clerk of superior court may issue ancillary letters in accordance with the provisions of Article 4 of this Chapter.

If the applicant and the clerk of superior court have no knowledge of the existence of a domiciliary personal representative, the clerk of superior court may proceed to issue ancillary letters. Subsequently, upon it becoming known that a domiciliary personal representative has been appointed, whether such appointment occurred before or after the issue of ancillary letters, the clerk of superior court shall notify the domiciliary personal representative, by registered mail, of the action taken by the clerk of superior court and the state of the ancillary administration. Such notice shall include a statement that at any time prior to approval of the ancillary personal representative's final account the domiciliary personal representative may appear in the proceedings for any purpose he may deem advisable; and that he may apply to be substituted as ancillary personal representative, but that such request will not be granted unless the clerk of superior court finds that such action will be for the best interests of North Carolina administration of the estate.

"§ 28A-26.4. Bonds. — (a) Subject to the exception in subsection (b), any personal representative, including a domiciliary personal representative, who is granted ancillary letters of administration in this State must satisfy the bond requirements prescribed in Article 8 of this Chapter.

(b) Where a citizen or subject of a foreign country, or of any other state or territory of the United States, by will sufficient according to the laws of this State, and duly probated and recorded in the proper county, devises to his executor, with power to sell and convey, real property situated in this State in trust for a person named in the will, the power being vested in the executor as such trustee, the executor may execute the power without giving bond in this State.

"§ 28A-26.5. Authority of domiciliary personal representative of a nonresident decedent.

— The domiciliary personal representative of the nonresident decedent after qualifying as ancillary personal representative in this State is authorized to administer the North Carolina estate of the nonresident decedent in accordance with the provisions of this Chapter.

"§ 28A-26.6. Jurisdiction. — (a) A domiciliary personal representative of a nonresident decedent may invoke the jurisdiction of the courts of this State after qualifying as ancillary personal representative in this State except that he may invoke such jurisdiction prior to qualification for the purpose of appealing from a decision of the clerk of superior court regarding a question of qualification.

(b) A domiciliary personal representative of a nonresident decedent submits to the jurisdiction of the courts of this State:

- (1) As provided in G.S. 1-75.4; or
- (2) By receiving payment of money or taking delivery of personal property under G.S. 28A-26.2; or
- (3) By acceptance of ancillary letters of administration in this State under G.S. 28A-26.3; or
- (4) By doing any act as personal representative in this State which if done as an individual would have given the State jurisdiction over him as an individual.

"§ 28A-26.7. Service on personal representative of a nonresident decedent. — A court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 28A-26.6 may exercise personal jurisdiction over a defendant by service of process in accordance with the provisions of G.S. 1A-1, Rule4(j).

"§ 28A-26.8. Duties of personal representative in an ancillary administration. — (a) All assets of estates of nonresident decedents being administered in this State are subject to all claims, allowances and charges existing or established against the estate of the decedent wherever existing or established.

(b) An adjudication of a claim rendered in any jurisdiction in favor of or against any personal representative of the estate of a nonresident decedent is binding on the ancillary personal representative in this State and on all parties to the litigation.

(c) Limitations on presentation of claims shall be governed by the provisions of this Chapter except that creditors residing in the domiciliary state barred by the statutes of that state may not file claims in an ancillary administration in this State.

(d) In the payment of claims by the ancillary administrator, the following rules shall apply:

- (1) If the value of the entire estate, wherever administered, equals or exceeds family exemptions and allowances, prior charges and claims against the entire estate, the claims allowed in this State shall be paid in full from assets in this State, if such assets are sufficient for the purpose.
- (2) If such total exemptions, allowances, charges and claims exceed the value of the entire estate, the claims allowed in this State shall be paid their proper percentage pro rata by class as provided by G.S. 28A-19.6, if assets in this State are sufficient for the purpose.
- (3) If assets in this State are inadequate for either of the purposes stated in subdivisions (1) or (2) above, the claims allowed in this State shall be paid,

pro rata by class as provided by G.S. 28A-19.6, to the extent the local assets will permit.

- (4) If the value of the entire estate, wherever administered, is insufficient to pay all exemptions and allowances, prior charges and claims against the entire estate, the priority for order of payment established by the law of the domicile will prevail.

"§ 28A-26.9. Remission of surplus assets by ancillary personal representative to domiciliary personal representative. — Unless a testator in a will otherwise directs, any assets (including proceeds from the sale of real estate) remaining after payment of claims against the estate of a nonresident decedent being administered by an ancillary personal representative other than the domiciliary personal representative shall be transferred and delivered to the domiciliary personal representative or, if none, to the court in the domicile of the decedent which has jurisdiction to administer the estate."

Sec. 4. G.S. 28-53 is hereby transferred to Chapter 36 of the General Statutes entitled Trust and Trustees and redesignated as Article IX - Testamentary Trustees - and codified as 36-62.

Sec. 5. This act shall be effective on and after July 1, 1975.

In the General Assembly read three times and ratified, this the 12th day of April, 1974.