

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 446
SENATE BILL 66

AN ACT TO AMEND VARIOUS STATUTES REGARDING THE ADMINISTRATION OF
DECEDENTS' ESTATES.

The General Assembly of North Carolina enacts:

Section 1. The following amendments are hereby made to Chapter 28A as the same appears in the 1976 Replacement Volume 2 A of the General Statutes.

a. G.S. 28A-13-6(e) is amended by adding a sentence at the end thereof to read as follows:

"No personal representative who has not joined in exercising a power shall be liable for the consequences of such exercise, nor shall a dissenting personal representative be liable for the consequences of an act in which he joins at the direction of the majority of the personal representatives, if he expressed his dissent in writing to any other personal representative at or before the time of such joinder."

b. G.S. 28A-14-1 is amended on line 5 before the words "six months" by adding the words "at least".

c. G.S. 28A-14-1 is amended on line 6 after the word "notice." by adding the following "The notice shall set out a mailing address for the personal representative or collector."

d. G.S. 28A-19-1 is hereby rewritten to read as follows:

"§ 28A-19-1. Manner of presentation of claims. — (a) A claim against a decedent's estate must be in writing and state the amount or item claimed, or other relief sought, the basis for the claim, and the name and address of the claimant; and must be presented by one of the following methods:

- (1) By delivery to the personal representative or collector. Such claim will be deemed to have been presented from the time of such delivery.
- (2) By mailing, first-class mail, to the personal representative or collector at the address set out in the general notice to creditors. Such claim will be deemed to have been presented from the time of deposit of the claim enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care of the United States Postal Service.

(b) In an action commenced after the death of the decedent against his personal representative or collector as such, the commencement of the action in the court in which such personal representative or collector qualified will constitute the presentation of a claim and no further presentation is necessary. In an action filed in any other court such claim will be deemed to have been presented at the time of the completion of service of process on such personal representative or collector.

(c) In an action pending against the decedent at the time of his death, which action survives at law, the substitution of the personal representative or collector for the decedent or motion therefor will constitute the presentation of a claim and no further presentation is necessary. Such claim will be deemed to have been presented from the time of the substitution, or motion therefor."

e. G.S. 28A-19-2 is amended by designating the existing paragraph as subsection "(b)" and is hereby further amended by adding a subsection "(a)" as follows:

"(a) 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."; and the catch line to G.S. 28A-19-2 is hereby amended to read as follows:

"Further information or affidavit of claim may be required."

f. G.S. 28A-19-3(a) is hereby rewritten to read as follows:

"(a) All claims against a decedent's estate which arose before the death of the decedent, except contingent claims based on any warranty made in connection with the conveyance of real estate and claims of the United States and tax claims of 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 by the date specified in 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."

g. G.S. 28A-19-3(b) is hereby rewritten to read as follows:

"(b) All claims against a decedent's estate which arise at or after the death of the decedent, except claims of the United States and tax claims of 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) With respect to any claim based on a contract with the personal representative or collector, within six months after the date on which performance by the personal representative or collector is due;
- (2) With respect to any claim other than a claim based on a contract with the personal representative or collector, within six months after the date on which the claim arises."

h. G.S. 28A-19-3(e) is hereby rewritten to read as follows:

"(e) Unless a claim has been presented pursuant to G.S. 28A-19-1 giving notice of an action or special proceeding pending against a decedent at the time of his death and surviving under G.S. 28A-18-1 by the date specified in 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 against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent."

i. G.S. 28A-19-4 is amended on lines 4 and 5 by deleting the words "expiration of six months after the day of the first publication or posting of" and inserting in lieu thereof the words "the date specified in".

j. G.S. 28A-21-1 is amended on lines 1 and 2 by deleting the words "If an extension of time to file the final account has been granted by the clerk of superior court." and inserting in lieu thereof the following "Until the final account has been filed".

k. G.S. 28A-21-2(b) is amended on lines 1 and 2 by deleting the words "upon the expiration of six months after the day of the first publication or posting of" and by inserting in lieu thereof the words "after the date specified in".

l. G.S. 28A-23-1 is amended on line 5 by deleting the citation to "G.S. 28A-22-5" and inserting in lieu thereof a citation to "G.S. 28A-21-2".

m. G.S. 28A-14-3 is rewritten to read as follows:

"§ 28A-14-3. **Personal notice to creditors required.** — In addition to the general notice required by G.S. 28A-14-1, the personal representative shall mail, by certified or registered mail, to each creditor a statement that his claim will be barred unless the creditor presents his claim in the time and manner set out in Article 19 of this Chapter. Any creditor to whom such notice was not mailed shall not be barred by the provisions of G.S. 25A-19-3 from prosecuting his claim, and the time limitations set out in General Statutes Chapter 1 shall govern the period within which such claim may be brought. Claims brought under this section may be paid from any undistributed assets of the estate."

n. G.S. 28A-19-3(d) is hereby rewritten to read as follows:

"(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 the time and manner set out in this Article."

Sec. 2. G.S. 1-22 as the same appears in the 1969 Replacement Volume 1A is hereby amended to read as follows:

"§ 1-22. **Death before limitation expires; action by or against personal representative or collector.** — If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced by his personal representative or collector after the expiration of that time, and within one year from his death. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his personal representative or collector after the expiration of that time; provided, the action is brought or notice of the claim upon which the action is based is presented to the personal representative or collector within the time specified for the presentation of claims in G.S. 28A-19-3. If the claim upon which the cause of action is based is filed with the personal representative or collector within the time above specified, and its validity is admitted in writing by him, it is not necessary to bring an action upon such claim to prevent the bar, but no action shall be brought against the personal representative or collector upon such claim after his final settlement."

Sec. 3. G.S. 1A-1, Rule 25(a) as the same appears in the 1969 Replacement Volume 1A is hereby rewritten to read as follows:

"(a) **Death.** No action abates by reason of the death of a party if the cause of action survives. In such case, the court, on motion at any time within the time specified for the presentation of claims in G.S. 28A-19-3, may order the substitution of said party's personal representative or collector and allow the action to be continued by or against the substituted party."

Sec. 4. G.S. 12-3(3) as the same appears in the 1969 Replacement Volume 1B is hereby amended by adding a sentence at the end thereof to read as follows:

"When a statute refers to a period of one or more months and the last month does not have a date corresponding to the initial date, the period shall expire on the last day of the last month."

Sec. 5. This act shall apply only to the administration of the estates of persons who die on or after the effective date of this act.

Sec. 6. This act shall become effective on September 1, 1977.

In the General Assembly read three times and ratified, this the 27th day of May, 1977.