

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 882
HOUSE BILL 484

AN ACT TO PRESERVE AT DEATH, PROPERTY RIGHTS ACQUIRED BY MARRIED PERSONS WHILE THEY RESIDED IN COMMUNITY PROPERTY STATES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes of North Carolina are hereby amended by adding a new Chapter thereto as follows:

"CHAPTER 31C.

"Uniform Disposition of Community Property Rights at Death Act.

"§ 31C-1. Application. — This act applies to the disposition at death of the following property acquired by a married person:

- (1) all personal property, wherever situated:
 - (i) which was acquired as or became, and remained, community property under the laws of another jurisdiction; or
 - (ii) all or the proportionate part of that property acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, that community property; or
 - (iii) traceable to that community property;
- (2) all or the proportionate part of any real property situated in this State which was acquired with the rents, issues or income of, the proceeds from, or in exchange for, property acquired as or which became, and remained, community property under the laws of another jurisdiction, or property traceable to that community property.

"§ 31C-2. Rebuttable presumptions. — In determining whether this act applies to specific property the following rebuttable presumptions apply:

- (1) property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as or to have become, and remained, property to which this act applies; and
- (2) real property situated in this State and personal property wherever situated, acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be property to which this act applies.

"§ 31C-3. Disposition upon death. — Upon death of a married person, one-half of the property to which this act applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this State. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this State. With respect to property to which this act applies, the one-half of the property of the decedent is not subject to the surviving spouse's right to dissent from the will under the provisions of Article 1 of Chapter 30,

and is not subject to the right to elect a life estate under the provisions of Article 8 of Chapter 29.

"§ 31C-4. Perfection of title of surviving spouse. — If the title to any property to which this act applies was held by the decedent at the time of death, or by a trustee of a revocable inter vivos trust created by the decedent, title of the surviving spouse may be perfected by an order of the clerk of superior court who appointed the decedent's personal representative or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the said clerk. Neither the personal representative nor the court in which the decedent's estate is being administered has a duty to discover or attempt to discover whether property held by the decedent is property to which this act applies, unless a written demand is made by the surviving spouse or the spouse's successor in interest.

"§ 31C-5. Perfection of title of personal representative, heir or devisee. — If the title to any property to which this act applies is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover or attempt to discover whether any property held by the surviving spouse is property to which this act applies, unless a written demand is made by an heir, devisee, or creditor of the decedent.

"§ 31C-6. Written demand. — (a) Written demand in this Chapter shall be made by a surviving spouse, the spouse's successor in interest, or the decedent's heirs or devisees not later than six months after the decedent's will has been admitted to probate, or not later than six months after the appointment of an administrator if there is no will, or not later than six months after the decedent's death if the property to which this Article applies is held in an inter vivos trust created by the decedent; and written demand by a creditor of the decedent shall be made within the period for presentation of a claim against the decedent's estate as set out in Article 19 of Chapter 28A.

(b) Written demand in this Chapter shall be delivered in person or by registered mail to the personal representative. As used in this Chapter, the personal representative may also mean the trustee of an inter vivos trust created by the decedent who has legal title to, or possession of, the property to which this Article applies.

"§ 31C-7. Purchaser for value or lender. — (a) If a surviving spouse has apparent title to property to which this act applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the personal representative or an heir or devisee of the decedent.

(b) If a personal representative or an heir or devisee of the decedent has apparent title to property to which this act applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the surviving spouse.

(c) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.

(d) The proceeds of a sale or creation of a security interest shall be treated in the same manner as the property transferred to the purchaser for value or a lender.

"§ 31C-8. Creditor's rights. — This act does not affect rights of creditors with respect to property to which this act applies.

"§ 31C-9. Acts of married persons. — This act does not prevent married persons from severing or altering their interests in property to which this act applies.

"§ 31C-10. Limitations on testamentary disposition. — This act does not authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

"§ 31C-11. Uniformity of application and construction. — This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

"§ 31C-12. Short title. — This act may be cited as the Uniform Disposition of Community Property Rights at Death Act."

Sec. 2. This act shall become effective upon ratification and shall apply to the disposition of property of persons dying on or after the effective date.

In the General Assembly read three times and ratified, this the 8th day of July, 1981.