

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-312
SENATE BILL 1021**

AN ACT TO PROTECT OWNERS OF ABANDONED PROPERTY BY REGULATING
PROPERTY FINDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116B-62 reads as rewritten:

"§ 116B-62. Preparation of list of owners by Treasurer.

(a) There shall be delivered annually in an electronic format to the Administrative Office of the Courts to be distributed to the clerk of superior court of each county ~~prior to June 30 of each year~~ a list prepared by the Treasurer of escheated and abandoned property reported to the Treasurer. ~~The list shall contain:~~contain all of the following:

- (1) The names, if known, in alphabetical order of surname, and last known addresses, if any, of apparent owners of escheated and abandoned ~~property;~~property as of June 30 of that year.
- (2) The names and addresses of the holders of the abandoned ~~property;~~and property.
- (3) A statement that claim and proof of legal entitlement to escheated or abandoned property shall be presented by the owner to the Treasurer, which statement shall set forth where further information may be obtained.

The Treasurer shall send the list to the Administrative Office of the Courts as soon as possible after June 30 of each year but no later than July 31, and the Administrative Office of the Courts shall distribute the list to each clerk of superior court as soon as possible after receiving it but no later than August 31.

(b) At the time the lists are distributed to the clerks of superior court, but no later than August 31 of each year, the Treasurer shall cause to be published once each week for two consecutive weeks, in at least two newspapers having general circulation in this State, a notice stating the nature of the lists and that the lists are available for inspection at the offices of the respective clerks of superior court, together with any other information the Treasurer deems appropriate to appear in the notice.

(c) The Treasurer is not required to include in any list any item of a value, as determined by the Treasurer, in the Treasurer's discretion, of less than fifty dollars (\$50.00), unless the Treasurer deems inclusion of items of lesser amounts to be in the public interest.

(d) The clerks of superior court shall ~~retain the lists on permanent file in their offices and shall make them~~ make the lists available for public inspection.

(e) The lists prepared by the Treasurer shall include only escheated and abandoned property reported for the current reporting date and are not required to be cumulative lists of escheated and abandoned property previously reported.

(f) Notwithstanding the provisions of Chapter 132 of the General Statutes, the supporting data and lists of apparent owners of ~~escheated and abandoned unclaimed property held by a clerk of superior court or any other office of State or local government~~ may be confidential until six months after the notice to clerks of superior court required by subsection (b) of this section has been distributed, but shall be disclosed to the Treasurer in accordance



with the reporting of escheated and abandoned property. The supporting data and lists of apparent owners of escheated and abandoned property held by the Treasurer may be confidential until six months after the list to the clerks of superior court required by subsection (b) of this section has been distributed. This subsection shall not apply to owners of reported property making inquiries about their property to the Escheat Fund."

SECTION 2. G.S. 116B-78 reads as rewritten:

"§ 116B-78. Agreement to locate property.

~~(a) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the Treasurer. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the Treasurer's denial of a claim.~~

(a1) Agreements Covered. – An agreement by an owner is covered by this section if its primary purpose is to locate, deliver, recover, or assist in the recovery of property that is distributable to the owner or presumed abandoned.

(a2) Void Agreements. – An agreement covered by this section is void and unenforceable if it was entered into during the period commencing on the date the property was distributable to the owner and extending to a time that is 24 months after the date the property is paid or delivered to the Treasurer. This subsection does not apply to an owner's agreement with an attorney to file a claim or special proceeding as to identified property or contest the Treasurer's denial of a claim or a clerk's denial of a petition.

~~(b) Criteria for Agreements. – An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property, covered by this section is enforceable only if the agreement if it meets all of the following criteria:~~

- ~~(1) is~~ Is in writing, writing and clearly sets forth the nature of the property and the services to be rendered, rendered.
- ~~(2) is~~ Is signed by the owner, owner, with signature notarized.
- ~~(3) Describes the property, which includes the type of property, the property ID held by the State Treasurer, and the name of the holder.~~
- ~~(4) States that there may be other claims to the property that may reduce the share of the owner.~~
- ~~(5) and states~~ States the value of the property property, to the extent known, before and after the fee or other compensation has been deducted.
- ~~(6) States clearly the fees and costs for services. Total fees and costs shall be limited as follows:~~
 - a. For an agreement covered by this section other than one covered by G.S. 28A-22-11, total fees and costs shall not exceed one thousand dollars (\$1,000) or twenty percent (20%) of the value of the property recovered, whichever is less.
 - b. For an agreement subject to G.S. 28A-22-11 by an heir, unknown or known but unlocated, the primary purpose of which is to locate or recover, or assist in the recovery, of a share in a decedent's estate, or surplus funds in a special proceeding, total fees and costs shall not exceed twenty percent (20%) of the value of the property recovered.
- ~~(7) Discloses that the property is being held by the North Carolina Department of State Treasurer's Unclaimed Property Program.~~

~~(c) Mineral Proceeds. – If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.~~

(d) Means of Payment. – Any person who enters into an ~~An~~ agreement covered by this section ~~that provides for compensation that is unconscionable is unenforceable except by the owner.~~ with an owner shall be allowed to receive cash property, but not tangible property or securities, on behalf of the owner but shall not be authorized to negotiate the check made payable to the owner. An owner who has made an agreement to pay compensation that is unconscionable, or the Treasurer on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorneys' fees to an owner who prevails in the action. Tangible property shall be delivered to the owner by the Treasurer, and securities will be reregistered into the owner's name.

(e) Other Remedies. – This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than as provided in subsection ~~(d)~~ (b) of this section.

(f) Registration. – Any person who enters into an agreement covered by this section with an owner shall register ~~annually~~ each calendar year with the Treasurer. The information to be required under this subsection shall include the person's name, address, telephone number, state of incorporation or residence, as applicable, and the person's social security or federal identification number. A registration fee of one hundred dollars (\$100.00) shall be paid to the Treasurer at the time of the filing of the registration information. Fees received under this subsection shall be credited to the General Fund.

(g) Unfair Trade Practice. – In addition to rendering an agreement void and unenforceable, a failure to comply with the provisions of this section constitutes an unfair or deceptive trade practice under G.S. 75-1.1."

SECTION 3. Article 22 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"§ 28A-22-11. Agreements with heirs.

Any agreement by an heir, unknown or known but unlocated, the primary purpose of which is to locate or recover, or assist in the recovery of, a share in a decedent's estate shall be subject to the provisions of G.S. 116B-78."

SECTION 4. This act becomes effective October 1, 2009, and applies to agreements entered into on or after that date.

In the General Assembly read three times and ratified this the 8th day of July, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 5:31 p.m. this 17th day of July, 2009