

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2009-444
SENATE BILL 606

AN ACT TO ESTABLISH A PROCEDURE FOR PROVIDING NOTICE TO CREDITORS WITHOUT ESTATE ADMINISTRATION WHEN A DECEDENT DIES LEAVING NO PROPERTY SUBJECT TO PROBATE AND TO MAKE A TECHNICAL CORRECTION TO THE PROVISION PROVIDING FOR COSTS IN THE ADMINISTRATION OF ESTATES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 28A of the General Statutes is amended by adding a new Article to read:

"Article 29.

"Notice to Creditors Without Estate Administration.

"§ 28A-29-1. Notice to creditors without estate administration.

When a decedent dies testate or intestate leaving no property subject to probate, any person otherwise qualified to serve as personal representative of the estate pursuant to Article 4 of this Chapter or the trustee then serving under the terms of a revocable trust created by the decedent may file a petition to be appointed as a limited personal representative to provide notice to creditors without administration of an estate before the clerk of superior court of the county where the decedent was domiciled at the time of death. This procedure is not available if the decedent's will provides that it is not available. A limited personal representative shall have the rights and obligations provided for in this Article.

"§ 28A-29-2. Petition.

(a) The application for appointment as limited personal representative shall be in the form of an affidavit sworn to before an officer authorized to administer oaths, signed by the applicant or the applicant's 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 all of the following facts:

- (1) The name and domicile of the decedent at the time of death.
- (2) The date and place of death of the decedent.
- (3) That, so far as is known or can with reasonable diligence be ascertained, the decedent's property is not subject to probate.
- (4) That no application or petition for appointment of a personal representative is pending or has been granted in this State.

(b) If it appears to the clerk of superior court that the application and supporting evidence comply with the requirements of subsection (a) of this section and on the basis thereof the clerk finds that the applicant is entitled to appointment, the clerk shall issue letters of limited administration.

(c) The petition shall be filed by the clerk upon payment of the fee provided in G.S. 7A-307(a) and shall be indexed in the index to estates.

"§ 28A-29-3. Effect of appointment.



A limited personal representative appointed under this Article shall provide notice to all persons, firms, and corporations having claims against the decedent, and proof of such notice shall be in accordance with the provisions of Article 14 of this Chapter.

"§ 28A-29-4. Presentation, payment, and limitation of claims.

Upon compliance with G.S. 28A-29-3, creditors of the decedent and the decedent's property shall present claims in accordance with the provisions of Article 19 of this Chapter, and creditors failing to file such claims shall be barred as provided in G.S. 28A-19-3. The limited personal representative shall administer claims so presented in accordance with the procedures and priorities provided pursuant to Article 19 of this Chapter. At any time after a claim is presented in accordance with the provisions of this section, the clerk may appoint a personal representative to administer the decedent's estate.

"§ 28A-29-5. Right to petition for appointment of personal representative.

Nothing in this Article shall preclude any person qualified to serve as personal representative pursuant to G.S. 28A-4-1, including the limited personal representative, from petitioning the clerk of superior court for the appointment of a personal representative to administer the decedent's estate."

SECTION 2. Article 21 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"§ 28A-21-2.2. Final accounting by limited personal representative.

(a) Filing Requirement. – A limited personal representative appointed pursuant to Article 29 of this Chapter shall file a sworn affidavit or report listing all debts and other claims duly presented to the limited personal representative and providing proof that the debts and other claims were satisfied, compromised, or denied, and that the time for filing suit thereon has expired. The sworn affidavit or report shall be filed within 30 days of the later of the following:

- (1) The date by which a claim must be presented as set forth in the general notice to creditors provided for in G.S. 28A-14-1.
- (2) The date by which an action for recovery of a rejected claim must be commenced under G.S. 28A-19-6.

(b) Action by Clerk. – The affidavit or report shall be reviewed and recorded by the clerk of superior court. Following the review, the clerk of superior court shall take one of the following actions:

- (1) Discharge the limited personal representative from office.
- (2) Require the filing of any additional information or documents determined by the clerk to be necessary to the understanding of the affidavit or report.
- (3) Order the full administration of the decedent's estate and appoint a personal representative."

SECTION 3. G.S. 7A-307(a) reads as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under ~~G.S. 36A-23-1~~, G.S. 36C-2-203, and in collections of personal property by affidavit, the following costs shall be assessed:

- (1) For the use of the courtroom and related judicial facilities, the sum of ten dollars (\$10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.
- (1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of one dollar (\$1.00), to be credited to the Court Information Technology Fund.
- (2) For support of the General Court of Justice, the sum of fifty dollars (\$50.00), plus an additional forty cents (40¢) per one hundred dollars (\$100.00), or

major fraction thereof, of the gross estate, not to exceed six thousand dollars (\$6,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be fifteen dollars (\$15.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents (\$2.05) of each fifty-dollar (\$50.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

- (2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars (\$100.00), or major fraction, of the gross estate, not to exceed six thousand dollars (\$6,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of twenty dollars (\$20.00) shall be assessed on the filing of each annual and final account. However, the fee shall be assessed only on newly contributed or acquired assets, all interest or other income that accrues or is earned on or with respect to any existing or newly contributed or acquired assets, and realized gains on the sale of any and all trust assets. Newly contributed or acquired assets do not include assets acquired by the sale, transfer, exchange, or otherwise of the amount of trust property on which fees were previously assessed.
- (2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.
- (2c) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars (\$100.00), or major fraction, of the gross estate shall not be assessed on the gross estate of a trust that is the subject of a proceeding under ~~G.S. 36A-23-1~~ G.S. 36C-2-203 if there is no requirement in the trust that accountings be filed with the clerk.
- (2d) Notwithstanding subdivisions (1) and (2) of this subsection, the only cost assessed in connection with the qualification of a limited personal representative under G.S. 28A-29-1 shall be a fee of twenty dollars (\$20.00) to be assessed upon the filing of the petition.
- (3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of twenty dollars (\$20.00)."

SECTION 4. This act becomes effective October 1, 2009, and applies to estates of persons dying on or after that date.

In the General Assembly read three times and ratified this the 29th day of July, 2009.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 11:20 a.m. this 7th day of August, 2009