

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. (1963, c. 634; 1973, c. 1329, s. 3.)

**§ 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 the domiciliary personal representative's 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 the domiciliary personal representative's 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, by registered or certified mail, 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. If no ancillary administrator qualifies within 90 days from the date of the notice, however, the resident debtor may pay the debt or deliver the property directly to the nonresident domiciliary personal representative as set forth in subsection (a) of this section. (1973, c. 1329, s. 3; 1975, c. 300, s. 11; 2011-344, s. 4.)

**§ 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 failure of the domiciliary personal representative 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 the domiciliary personal representative may deem advisable; and that the domiciliary personal representative 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. (1973, c. 1329, s. 3; 2011-344, s. 4.)

**§ 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 that person's 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. (1911, c.

176; C.S., s. 37; Ex. Sess. 1920, c. 86; 1945, c. 652; 1957, c. 320; 1969, c. 1067, ss. 1, 2; 1973, c. 1329, s. 3; 2011-344, s. 4.)

**§ 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. (1973, c. 1329, s. 3.)

**§ 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 the domiciliary personal representative 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 the personal representative as an individual. (1973, c. 1329, s. 3; 2011-344, s. 4.)

**§ 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, Rule 4(j). (1973, c. 1329, s. 3.)

**§ 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, 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, 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. (1973, c. 1329, s. 3; 1975, c. 19, ss. 10, 11.)

**§ 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. (1973, c. 1329, s. 3.)