

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 733*

Short Title: Renunciation Amendments. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary II (Criminal).

March 14, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW RELATING TO RENUNCIATIONS, AS
3 RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 31B-1 reads as rewritten:

6 "§ 31B-1. **Right to renounce succession.**

7 (a) A person who succeeds to a property interest as:

8 (1) ~~Heir, or~~ Heir;

9 (2) Next of ~~kin, or~~ kin;

10 (3) ~~Devisee, or~~ Devisee;

11 (4) ~~Legatee, or~~ Legatee;

12 (4a) Donee;

13 (5) Beneficiary of a life insurance policy who did not possess the incidents
14 of ownership under the policy at the time of death of the ~~insured, or~~
15 insured;

16 (6) Person succeeding to a renounced ~~interest, or~~ interest;

17 (7) Beneficiary under a testamentary trust or under an inter vivos ~~trust, or~~
18 trust;

19 (8) Appointee under a power of appointment exercised by a testamentary
20 instrument or a nontestamentary ~~instrument, or~~ instrument;

21 (9) Repealed by Session Laws 1989, c. 684, s. 2.

22 (9a) Surviving joint tenant, surviving tenant by the entireties, or surviving
23 tenant of a tenancy with a right of ~~survivorship, or~~ survivorship;

24 (9b) Person entitled to share in a testator's estate under the provisions of
25 ~~G.S. 31-5.5, or~~ G.S. 31-5.5;

26 (9c) Beneficiary under any other testamentary or nontestamentary
27 instrument, including a beneficiary under:

28 a. Any qualified or nonqualified deferred compensation, employee
29 benefit, retirement or death benefit, plan, fund, annuity,

1 contract, policy, program or instrument, either funded or
 2 unfunded, which is established or maintained to provide
 3 retirement income or death benefits or results in, or is intended
 4 to result in, deferral of income;

5 b. An individual retirement account or individual retirement
 6 annuity; or

7 c. Any annuity, payable on ~~death,~~ death account, or other right to
 8 death benefits arising under ~~contract;~~ contract.

9 (9d) ~~The duly~~ Duly authorized or appointed guardian with the prior or
 10 subsequent approval of the clerk of superior court, ~~or or, if required,~~
 11 of the resident judge of the superior court, of any of the ~~above.~~ above; or

12 (9e) Fiduciary, including an attorney-in-fact of any of the above, and
 13 including a personal representative of any of the above appointed
 14 under Chapter 28A of the General Statutes, subject to G.S. 31B-1.1(a),
 15 (b), and (c);

16 (10) ~~The personal representative appointed under Chapter 28A of any of the~~
 17 ~~above,~~

18 ~~or the attorney in fact of any of the above~~ may renounce in whole or in part the right of
 19 succession to any property or interest therein, including a future interest, by filing a
 20 written instrument under the provisions of this Chapter. A renunciation may be of a
 21 fractional share or any limited interest or estate. The renunciation shall be deemed to
 22 include the entire interest of the person renouncing unless otherwise specifically limited.
 23 A person may renounce any interest in or power over property, including a power of
 24 appointment, even if its creator imposed a spendthrift provision or similar restriction on
 25 transfer or a restriction or limitation on the right to renounce. Provided, however,
 26 Notwithstanding the foregoing, there shall be no right of partial renunciation if the
 27 decedent or ~~donee~~ creator of the power expressly so provided in the instrument creating
 28 the interest.

29 (b) This Chapter shall apply to all renunciations of present and future interests,
 30 whether qualified or nonqualified for federal and State inheritance, estate, and gift tax
 31 purposes, unless expressly provided otherwise in the instrument creating the interest.

32 (c) The instrument of renunciation shall (i) identify the transferor of the property
 33 or interest in the property or the creator of the power, (ii) describe the property or
 34 interest renounced, (ii) (iii) declare the renunciation and extent thereof, (iii) and (iv) be
 35 signed and acknowledged by the person ~~authorized to renounce.~~ renouncing.

36 (d) A custodial parent of a minor for whom no general guardian or guardian of
 37 the estate has been appointed may renounce, in whole or in part, an interest in or power
 38 over property (including a power of appointment) that, but for the custodial parent's
 39 renunciation, would have passed to the minor as the result of another renunciation. The
 40 custodial parent may renounce the interest or power even if its creator imposed a
 41 spendthrift provision or similar restriction on transfer or a restriction or limitation on the
 42 right to renounce."

43 **SECTION 2.** G.S. 31B-1A is recodified as G.S. 31B-1.1. G.S. 31B-1.1, as
 44 recodified by this section, reads as rewritten:

1 **"§ 31B-1.1. Right to renounce fiduciary powers. Renunciation by fiduciary.**

2 (a) Except as otherwise provided in the testamentary or nontestamentary
3 instrument, a fiduciary under a testamentary or nontestamentary instrument may
4 renounce, in whole or in part, fiduciary rights, privileges, powers, and ~~immunities by~~
5 ~~executing and by delivering, filing, or recording a written renunciation pursuant to the~~
6 ~~provisions of G.S. 31B-2.~~ A immunities; however, a fiduciary may not renounce the
7 rights of beneficiaries unless the instrument creating the fiduciary relationship
8 authorizes such a renunciation. The instrument of renunciation shall (i) identify the
9 creator of the rights, powers, privileges, or immunities, (ii) describe any right, power,
10 privilege, or immunity renounced, (iii) declare the renunciation and the extent thereof,
11 and (iv) be signed and acknowledged by the fiduciary authorized to renounce.

12 (b) ~~The instrument of renunciation shall (i) describe any fiduciary right, power,~~
13 ~~privilege, or immunity renounced, (ii) declare the renunciation and the extent thereof,~~
14 ~~and (iii) be signed and acknowledged by the fiduciary authorized to renounce.~~ Except to
15 the extent a statute of this State expressly restricts or limits a fiduciary's right to
16 renounce, a fiduciary acting in a fiduciary capacity, including a trustee of a charitable
17 trust, may renounce an interest in property as permitted by G.S. 31B-1.

18 (c) If a fiduciary renounces property or a power that otherwise would have
19 become property held by the fiduciary pursuant to the instrument, the property or power
20 shall not become property held by the fiduciary pursuant to the instrument. A
21 renouncing trustee continues to hold legal title to the property or power if, by the terms
22 of the trust instrument, the effect of the renunciation is to transfer equitable title to a
23 beneficiary of the trust.

24 (d) If a fiduciary so elects, the fiduciary may institute a special proceeding by
25 petition in the superior court for a determination as to whether a renunciation is or
26 would be compatible with the fiduciary's duties as provided in this subsection:

27 (1) A petition filed under this subsection regarding a renunciation that
28 includes any interest in real property may be filed in the office of the
29 clerk of the superior court of any county in which all or any part of the
30 real property is situated or any county in which venue would otherwise
31 lie.

32 (2) Commencement, notice and service of summons shall be accomplished
33 in accordance with Article 33 of Chapter 1 of the General Statutes.

34 (3) All holders of record legal title to the interest renounced or to be
35 renounced as well as all beneficiaries under the instrument creating the
36 fiduciary relationship in esse shall be parties to the proceeding, and
37 where any of the beneficiaries are under legal disability, their duly
38 appointed general guardians or their guardians ad litem shall be made
39 parties. The clerk of the superior court shall appoint a guardian ad
40 litem to represent the interests of any beneficiaries not in esse, and the
41 guardian ad litem shall be a party to the proceeding. The trustee of a
42 charitable trust filing a petition under this subsection shall provide a
43 copy of the petition to the North Carolina Attorney General, and the

1 petition shall contain a specific statement that it is being provided to
2 the Attorney General pursuant to this subdivision.

3 (4) The petition shall state the basis for the fiduciary's allegation that the
4 renunciation is or would be compatible with the fiduciary's duties,
5 considering among other things the intended purposes of the trust or
6 other instrument and the impact of the renunciation on beneficiaries
7 and potential beneficiaries.

8 (5) After considering among other things the intended purposes of the
9 trust or other instrument and the impact of the renunciation on
10 beneficiaries and potential beneficiaries, the clerk shall enter an order
11 stating the clerk's determination as to whether the renunciation is or
12 would be compatible with the fiduciary's duties.

13 (6) The effectiveness of a renunciation is not affected by a proceeding
14 under this subsection."

15 **SECTION 3.** G.S. 31B-2 reads as rewritten:

16 "**§ 31B-2. Time and place of filing renunciation.**

17 (a) To be a qualified disclaimer for federal and State inheritance, estate, and gift
18 tax purposes, an instrument ~~renouncing a present interest of~~ renunciation shall be filed
19 within the time period required under the applicable federal statute for a renunciation to
20 be given effect as a disclaimer for federal estate and gift tax purposes. If there is no such
21 federal statute the instrument shall be filed not later than nine months after the date the
22 transfer of the renounced interest to the ~~renouncee~~ person renouncing was complete for
23 the purpose of such taxes.

24 (b) ~~An instrument renouncing a future interest shall be filed not later than six~~
25 ~~months after the event by which the taker of the property or interest is finally~~
26 ~~ascertained and his interest indefeasibly vested and he is entitled to possession even~~
27 ~~though such renunciation may not be recognized as a disclaimer for federal estate tax~~
28 ~~purposes.~~ When a renunciation is made within the time period required under subsection
29 (a) of this section, the spouse of the person renouncing real property or an interest in
30 real property is not required to join in the execution of the instrument of renunciation,
31 and, as provided in G.S. 31B-3(a)(1), the spouse has no statutory dower, inchoate
32 marital rights, elective share, or any other marital interest in the real property or real
33 property interest renounced.

34 (c) ~~The renunciation shall be is effective when~~ filed with the clerk of court of (i)
35 in the county in which court proceedings have been commenced for the administration
36 of the estate of the deceased owner or deceased ~~donee~~ creator of the ~~power or, if they~~
37 ~~have not been commenced, in which they could be commenced.~~ A copy of the
38 renunciation shall be delivered in person or mailed by registered or certified mail to any
39 personal representative, or other fiduciary of the decedent or donee of the power. If the
40 property interest renounced includes any proceeds of a life insurance policy being
41 renounced pursuant to G.S. 31B-1(a)(5) the person renouncing shall mail, by registered
42 or certified mail, a copy of the renunciation to the insurance company issuing the policy.
43 ~~If the property or property interest renounced is created by nontestamentary instrument,~~
44 ~~a copy of the renunciation shall be delivered in person, or mailed by registered or~~

1 certified mail, to the trustee or other person who has legal title to, or possession of, the
2 property or property interest renounced; or (ii) if proceedings have not been
3 commenced, then in a county in which they could be commenced; or (iii) in all other
4 cases, in a county with a court that has jurisdiction to enforce the terms of the
5 instrument creating the interest renounced. In addition to the above requirements, a
6 renunciation of real property, or an interest therein, shall be registered in accordance
7 with the provisions of G.S. 31B-2(d).

8 (d) If real property or an interest therein is renounced, ~~a copy of the instrument of~~
9 ~~renunciation shall also be filed for recording in the office of the register of deeds of all~~
10 ~~counties wherein any part of the interest renounced is situated. registered as provided in~~
11 ~~G.S. 47-18 or G.S. 47-20.~~ The instrument of renunciation shall be indexed in the
12 grantor's index under (i) the name of the ~~deceased owner~~ transferor or ~~donee~~ creator
13 of the power, and (ii) the name of the person renouncing. ~~The renunciation of an interest,~~
14 ~~or a part thereof, in real property shall not be effective to renounce such interest until a~~
15 ~~copy of the renunciation is filed for recording in the office of the register of deeds in the~~
16 ~~county wherein such interest or part thereof is situated. A spouse of a person renouncing~~
17 ~~real property or an interest in real property shall have no statutory dower, inchoate~~
18 ~~marital rights, or any other interest in the real property or real property interest~~
19 ~~renounced. Failure to file or register the instrument of renunciation does not affect the~~
20 ~~effectiveness of the renunciation as between the person renouncing and persons to~~
21 ~~whom the property interest or power passes by reason of the renunciation; however,~~
22 ~~record title to a renounced interest in real property does not pass to persons receiving~~
23 ~~the renounced interest by reason of the renunciation until the instrument of renunciation~~
24 ~~is registered as provided in G.S. 47-18 or G.S. 47-20.~~

25 (e) If an instrument transferring an interest in or right, privilege, power or
26 immunity over property subject to a renunciation is required or permitted by law to be
27 filed or registered, the instrument of renunciation may be so filed or registered. Failure
28 to file or register the instrument of renunciation does not affect the effectiveness of the
29 renunciation as between the person renouncing and persons to whom the property
30 interest or power passes by reason of the renunciation."

31 **SECTION 4.** Chapter 31B of the General Statutes is amended by adding a
32 new section to read:

33 **"§ 31B-2.1. Delivery of instrument of renunciation by the person renouncing to**
34 **other persons.**

35 (a) In this section:

36 (1) "Beneficiary designation" means an instrument, other than an
37 instrument creating a trust, naming the beneficiary of:

38 a. An annuity or insurance policy;

39 b. An account with a designation for payment on death;

40 c. A security registered in beneficiary form;

41 d. A pension, profit-sharing, retirement, or other
42 employment-related benefit plan;

43 e. An individual retirement account or retirement annuity; or

44 f. Any other nonprobate transfer at death.

1 (2) "Deliver" means to deliver in person or to send, properly addressed, by
2 first-class mail, telephonic facsimile transmission equipment,
3 electronic mail, or third-party commercial carrier, or by any method
4 permitted by G.S. 1A-1, Rule 4.

5 (b) The failure to deliver a copy of an instrument of renunciation by a method
6 permitted by G.S. 1A-1, Rule 4, or by a method that results in actual receipt tolls any
7 statute of limitations with regard to any right of action for breach of fiduciary duty.

8 (c) If a fiduciary renounces an interest in property held pursuant to the instrument
9 creating the fiduciary relationship, a copy of the instrument of renunciation shall be
10 delivered to each living person whose beneficial interest is affected by the renunciation.

11 (d) In the case of an interest created under the law of intestate succession or an
12 interest created by will, other than an interest in a testamentary trust, a copy of the
13 instrument of renunciation must:

14 (1) Be delivered to the personal representative of the decedent's estate; or

15 (2) If no personal representative is then serving, be filed with a court
16 having jurisdiction to appoint the personal representative.

17 (e) In the case of an interest in a testamentary trust, a copy of the instrument of
18 renunciation must:

19 (1) Be delivered to the trustee then serving;

20 (2) If no trustee is then serving, be delivered to the personal representative
21 of the decedent's estate; or

22 (3) If no personal representative or trustee is then serving, be filed with a
23 court having jurisdiction to enforce the trust.

24 (f) In the case of an interest in an inter vivos trust, a copy of the instrument of
25 renunciation must:

26 (1) Be delivered to the trustee then serving;

27 (2) Except as provided in subdivision (3) of this subsection, if no trustee is
28 then serving, be filed with a court having jurisdiction to enforce the
29 trust; or

30 (3) If the renunciation is made before the time the instrument creating the
31 trust becomes irrevocable, be delivered to the settlor of the trust or the
32 transferor of the interest.

33 (g) In the case of an interest created by a beneficiary designation made before the
34 time the designation becomes irrevocable, a copy of the instrument of renunciation must
35 be delivered to the person making the beneficiary designation.

36 (h) In the case of an interest created by a beneficiary designation made after the
37 time the designation becomes irrevocable, a copy of the instrument of renunciation must
38 be delivered to the person obligated to distribute the interest.

39 (i) In the case of a renunciation by a surviving holder of an interest in property
40 subject to a right of survivorship, a copy of the instrument of renunciation must be
41 delivered to the persons to whom the person renouncing reasonably believes the
42 renounced interest passes, at their last addresses known to the person renouncing.

1 (j) In the case of a renunciation by a permissible appointee, or taker in default of
2 exercise, of a power of appointment at any time after the power was created, a copy of
3 the instrument of renunciation must be delivered:

4 (1) To the holder of the power;

5 (2) To the fiduciary acting under the instrument that created the power or,
6 if no fiduciary is then serving under the instrument that created the
7 power, filed with a court having authority to appoint the fiduciary; and

8 (3) To any holder of legal title to the property subject to the power of
9 appointment other than the fiduciary.

10 (k) In the case of a renunciation by an appointee of an exercised power of
11 appointment, a copy of the instrument of renunciation must be delivered:

12 (1) To the holder of the power or the personal representative of the
13 holder's estate;

14 (2) To the fiduciary under the instrument that created the power or, if no
15 fiduciary is then serving under the instrument that created the power,
16 filed with a court having authority to appoint the fiduciary; and

17 (3) To any holder of legal title to the property subject to the power of
18 appointment other than the fiduciary.

19 (l) In the case of a renunciation of a power of appointment by the holder of the
20 power, a copy of the instrument of renunciation must be delivered:

21 (1) To the fiduciary acting under the instrument that created the power or,
22 if no fiduciary is then serving under the instrument that created the
23 power, filed with a court having authority to appoint the fiduciary; and

24 (2) To any holder of legal title to the property subject to the power of
25 appointment other than the fiduciary.

26 (m) In the case of a renunciation by a fiduciary of a right, privilege, power, or
27 immunity relating to a trust or estate, a copy of the instrument of renunciation must be
28 delivered as provided in subsections (c), (d), (e), or (f) of this section, as if the power
29 renounced were an interest in property.

30 (n) In the case of a renunciation of a power by an agent, including an
31 attorney-in-fact, a copy of the instrument of renunciation must be delivered to the
32 principal or the principal's representative.

33 (o) In the case of a renunciation by a trustee of a charitable trust, a copy of the
34 instrument of renunciation must be delivered to the North Carolina Attorney General in
35 addition to any other delivery required by this section.

36 (p) In the case of a renunciation by a donee, a copy of the instrument of
37 renunciation must be delivered to the persons to whom the person renouncing
38 reasonably believes the renounced interest passes, at their last addresses known to the
39 person renouncing.

40 (q) The failure to deliver a copy of the instrument of renunciation as required in
41 this section does not affect the validity of the renunciation for purposes of G.S. 31B-3
42 even though the renunciation may not be recognized as a disclaimer for federal estate
43 tax purposes."

44 **SECTION 5.** G.S. 31B-3 reads as rewritten:

1 **"§ 31B-3. Effect of renunciation.**

2 (a) Unless the decedent, donee of a power of appointment, or creator of an
3 interest under an inter vivos instrument has otherwise provided in the instrument
4 creating the interest, the property or interest renounced devolves as follows:

5 (1) If the renunciation is filed within the time period described in
6 G.S. 31B-2(a), the property or interest renounced devolves as if the
7 ~~renouncee~~ person renouncing had predeceased the date the transfer of
8 the renounced interest to the ~~renouncee~~ person renouncing was
9 complete for federal and State inheritance, estate, and gift tax
10 purposes, or, in the case of the renunciation of a fiduciary right, power,
11 privilege, or immunity, the property or interest subject to the power
12 devolves as if the fiduciary right, power, privilege, or immunity never
13 existed. Any such renunciation relates back for all purposes to the date
14 the transfer of the renounced interest to the ~~renouncee~~ person
15 renouncing was complete for the purpose of those ~~taxes.~~ taxes, and the
16 spouse of the person renouncing has no elective share or other marital
17 interest in the renounced property.

18 (2) If the renunciation is not filed within the time period described in
19 G.S. 31B-2(a), the property or interest devolves as if the ~~renouncee~~
20 person renouncing had died on the date the renunciation is filed, or, in
21 the case of the renunciation of a fiduciary right, power, privilege, or
22 immunity, the property or interest subject to the power devolves as if
23 the fiduciary right, power, privilege, or immunity ceased to exist as of
24 the date the renunciation is filed.

25 (3) Any future interest that takes effect in possession or enjoyment after
26 the termination of the estate or interest renounced takes effect as if the
27 ~~renouncee~~ person renouncing had died on the date determined under
28 subdivision (1) or (2) of this subsection, and upon the filing of the
29 renunciation the persons in being as of the time the ~~renouncee~~ person
30 renouncing is deemed to have died will immediately become entitled
31 to possession or enjoyment of any such future interest.

32 (b) In the event that the property or interest renounced was created by
33 testamentary disposition, the devolution of the property or interest renounced shall be
34 governed by G.S. 31-42(a) notwithstanding that in fact the ~~renouncee~~ person renouncing
35 has not actually died before the testator.

36 (c) In the event that the decedent dies intestate, or the ownership or succession to
37 property or to an interest is to be determined as though a decedent had died intestate,
38 and the ~~renouncee~~ person renouncing had predeceased the decedent, then the property or
39 interest renounced shall be distributed to such issue, per stirpes. If the ~~renouncee~~ person
40 renouncing does not have such issue, then the property or interest shall be distributed as
41 though the ~~renouncee~~ person renouncing had predeceased the decedent.

42 (d) Except as provided in the instrument of renunciation, if a renunciation causes
43 property to pass to a trust in which the person renouncing holds a power of appointment,

1 the person renouncing is deemed to have renounced the power of appointment with
2 respect to assets passing into the trust by reason of the renunciation.

3 (e) Unless otherwise provided in the instrument of renunciation, the interest in
4 property being renounced by a surviving tenant by the entireties upon the death of the
5 other tenant is the one-half interest in the entireties property to which the surviving
6 tenant would have been entitled by right of survivorship, and, as to that one-half
7 interest, the deceased tenant is the transferor.

8 (f) Unless otherwise provided in the instrument of renunciation, the interest in
9 property being renounced by a surviving joint tenant with right of survivorship is
10 limited to the fractional interest of the deceased joint tenant to which the surviving joint
11 tenant would have been entitled by right of survivorship, and, as to that fractional
12 interest, the deceased joint tenant is the transferor."

13 **SECTION 6.** G.S. 31B-4 reads as rewritten:

14 **"§ 31B-4. Waiver and bar.**

15 (a) The right to renounce property or an interest therein is barred by:

- 16 (1) An assignment, conveyance, encumbrance, pledge, or transfer of the
17 property or interest, or a contract therefor by the person authorized to
18 renounce,
19 (2) A written waiver of the right to renounce, or
20 (3) Repealed by Session Laws 1998-148, s. 4.
21 (4) A sale of the property or interest under judicial sale made before the
22 renunciation is effected.

23 (b) The renunciation or the written waiver of the right to renounce is binding
24 upon the ~~renouncee~~ person renouncing or person waiving and all persons claiming
25 through or under ~~him~~ that person.

26 (c) A fiduciary's application for appointment or assumption of duties as fiduciary
27 does not waive or bar the fiduciary's right to renounce a right, power, privilege, or
28 immunity.

29 (d) No person shall be liable for distributing or disposing of property in reliance
30 upon the terms of a renunciation that is invalid for the reason that the right of
31 renunciation has been waived or barred, if the distribution or disposition is otherwise
32 proper, and the person has no actual knowledge or record notice of the facts that
33 constitute a waiver or bar to the right of renunciation.

34 (e) The right to renounce property or an interest in property pursuant to this
35 Chapter is not barred by an acceptance of the property, interest, or benefit thereunder;
36 provided, however, an acceptance of the property, interest, or benefit thereunder may
37 preclude such renunciation from being a qualified renunciation for federal and State
38 inheritance, estate, and gift tax purposes.

39 (f) An instrument waiving or barring the right to renounce an interest in real
40 property is not effective as to persons protected under G.S. 47-18 or G.S. 47-20 until
41 either (i) registered as provided in those sections or (ii) registered pursuant to a judicial
42 sale proceeding as described in subdivision (4) of subsection (a) of this section in which
43 the person renouncing is a party. The instrument of waiver or bar shall be indexed in the
44 grantor's index under (i) the name of the transferor of the property or interest in the

1 property or creator of the power, and (ii) the name of the person whose renunciation is
2 waived or barred."

3 **SECTION 7.** Chapter 31B of the General Statutes is amended by adding a
4 new section to read:

5 **"§ 31B-4.1. Tax qualified renunciation.**

6 If, as a result of a renunciation or transfer, the renounced or transferred property is
7 treated pursuant to the provisions of Title 26 of the United States Code, as now or
8 hereafter amended, or any successor statute thereto, and the regulations promulgated
9 thereunder, as never having been transferred to the person renouncing, then the
10 renunciation or transfer is an effective renunciation, notwithstanding any other
11 provision of this Chapter. This section does not preclude an action for breach of
12 fiduciary duty."

13 **SECTION 8.** G.S. 31B-6 is repealed.

14 **SECTION 9.** This act becomes effective January 1, 2008, and applies to
15 instruments executed on or after that date.