

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 651
HOUSE BILL 807

AN ACT TO PROVIDE FOR SMALL ESTATES PROCEDURE IF THERE IS A
WILL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-25-1 is amended by rewriting the title to read: "Collection of property by affidavit when decedent dies intestate."; and by inserting the phrase "or creditor" after the word "heir" wherever it appears.

Sec. 2. Article 25 of Chapter 28A of the General Statutes is amended by adding after G.S. 28A-25-1 a new section to read:

"§ 28A-25-1.1. Collection of property by affidavit when decedent dies testate. –(a) When a decedent dies testate leaving property, real or personal or both, less liens and encumbrances, not exceeding ten thousand dollars (\$10,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of property belonging to the decedent shall make payment of the indebtedness or deliver the property to a person claiming to be an heir, creditor, or devisee of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir, creditor, or devisee stating:

- (1) The name and address of the affiant and the fact that he is an heir, creditor, or devisee of the decedent;
- (2) The name of the decedent and his residence at time of death;
- (3) The date and place of death of the decedent;
- (4) That 30 days have elapsed since the death of the decedent;
- (5) That the decedent died testate leaving property, real or personal or both, less liens and encumbrances, not exceeding ten thousand dollars (\$10,000) in value;
- (6) That the decedent's will has been admitted to probate in the court of the proper county and a duly certified copy of the will has been recorded in each county in which is located any real property owned by the decedent at the time of his death;
- (7) That a certified copy of the decedent's will is attached to the affidavit;
- (8) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;
- (9) The names and addresses of those persons who are entitled, under the provisions of the will or of the Intestate Succession Act, to the

property of the decedent; and their relationship, if any, to the decedent;
and

- (10) A description sufficient to identify each tract of real property owned by the decedent at the time of his death.

(b) Prior to the recovery of any assets of the decedent, a copy of the affidavit described in subsection (a) shall be filed in the office of the clerk of superior court of the county where the decedent had his domicile at the time of his death. The affidavit shall be filed by the clerk upon payment of the fee provided in G.S. 7A-307, shall be indexed in the index to estates, and a copy shall be mailed by the clerk to the persons shown in the affidavit as entitled to the property.

(c) The presentation of an affidavit as provided in subsection (a) shall be sufficient to require the transfer to the affiant or his designee of the title and license to a motor vehicle registered in the name of the decedent owner; the ownership rights of a savings account or checking account in a bank in the name of the decedent owner; the ownership rights of a savings account or share certificate in a credit union, building and loan association, or savings and loan association in the name of the decedent owner; the ownership rights in any stock or security registered on the books of a corporation in the name of a decedent owner; or any other property or contract right owned by decedent at the time of his death."

Sec. 3. G.S. 28A-25-2 is amended as follows:

1. In the first sentence by deleting the phrase "personal property" and substituting the word "property";
2. In the first and fourth sentences by adding after the phrase "G.S. 28A-25-1(a)" the phrase "or 28A-25-1.1(a)" in each sentence;
3. In the second and third sentences by deleting the word "personal" in each sentence; and
4. In the last sentence by deleting the phrase "or creditor" and substituting the phrase ", creditor, or devisee".

Sec. 4. G.S. 28A-25-3 is rewritten to read:

"§ 28A-25-3. Disbursement and distribution of property collected by affidavit. –

(a) If there has been no personal representative or collector appointed by the clerk of superior court, the heir, creditor, or devisee who has collected property of the decedent by affidavit pursuant to G.S. 28A-25-1 or G.S. 28A-25-1.1 shall:

- (1) Disburse and distribute the property in the following order:
 - a. To the payment of the surviving spouse's year's allowance and the children's year's allowance assigned in accordance with G.S. 30-15 through 30-33;
 - b. To the payment of the debts and claims against the estate of the decedent in the order of priority set forth in G.S. 28A-19-6, or to the reimbursement of any person who has already made payment thereof;
 - c. To the distribution of the remainder of the property to the persons entitled thereto under the provisions of the will or of the Intestate Succession Act; and

- (2) File an affidavit with the clerk of superior court that he has collected the property of the decedent and the manner in which he has disbursed and distributed it. This final affidavit shall be filed within 90 days of the date of filing of the qualifying affidavit provided for in G.S. 28A-25-1 or G.S. 28A-25-1.1. If the heir, creditor, or devisee cannot file the final affidavit within 90 days, he shall file a report with the clerk within that time period stating his reasons. Upon determining that the heir, creditor, or devisee has good reason not to file the final affidavit within 90 days, the clerk may extend the time for filing up to one year from the date of filing the qualifying affidavit.

(b) Nothing in this section shall be construed as changing the rule of G.S. 28A-15-1 and G.S. 28A-15-5 rendering both real and personal property, without preference or priority, available for the discharge of debts and other claims against the estate of the decedent. If it appears that it may be in the best interest of the estate to sell, lease, or mortgage any real property to obtain money for the payment of debts or other claims against the decedent's estate, the affiant shall petition the clerk of superior court for the appointment of a personal representative to conclude the administration of the decedent's estate pursuant to G.S. 28A-25-5."

Sec. 5. G.S. 28A-25-4 is amended as follows:

1. In the first sentence by deleting the word "personal";
2. In the first sentence by adding after the phrase "G.S. 28A-25-1" the phrase "or 28A-25-1.1"; and
3. In the first and second sentences by adding after the word "heir" the phrase ", creditor, or devisee" in each sentence.

Sec. 6. G.S. 28A-25-5 is amended in the second sentence by deleting the phrase "personal property" and substituting the word "property".

Sec. 7. This act shall become effective October 1, 1985.

In the General Assembly read three times and ratified, this the 8th day of July, 1985.