

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 670
HOUSE BILL 804

AN ACT TO CLARIFY THE PROPERTY REQUIREMENTS FOR PROBATE BY
AFFIDAVIT OF SMALL TESTATE ESTATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-25-1.1(a) reads as rewritten:

"(a) When a decedent dies testate leaving personal property ~~real or personal or both~~, less liens and encumbrances thereon, 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 tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent ~~property belonging to the decedent~~ shall make payment of the indebtedness or deliver the property tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be an heir or 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 or creditor, ~~or devisee~~ stating:

- (1) The name and address of the affiant and the fact that he is an heir or 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 personal property, ~~real or personal or both~~, less liens and encumbrances thereon, 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."

Sec. 2. G.S. 28A-25-2 reads as rewritten:

"§ 28A-25-2. Effect of affidavit. – The person paying, delivering, transferring or issuing personal property or the evidence thereof pursuant to an affidavit meeting the requirements of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) is discharged and released to the same extent as if he dealt with a duly qualified personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in an action brought for that purpose by or on behalf of the persons entitled thereto. The court costs and attorney's fee incident to the action shall be taxed against the person whose refusal to comply with the provisions of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) made the action necessary. The heir or creditor ~~or devisee~~ to whom payment, delivery, transfer or issuance is made is answerable and accountable therefore to any duly qualified personal representative or collector of the decedent's estate or to any other person having an interest in the estate."

Sec. 3. G.S. 28A-25-3(a) reads as rewritten:

"(a) If there has been no personal representative or collector appointed by the clerk of superior court, the heir or creditor ~~or devisee~~ who has collected personal 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 same ~~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 G.S. 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 personal 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 personal property of the decedent and the manner in which he has disbursed and distributed the same. 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 or 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 or 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."

Sec. 4. G.S. 28A-25-4 reads as rewritten:

"§ 28A-25-4. **Clerk may compel compliance.**—If any heir or creditor who has collected personal property of the decedent by affidavit pursuant to G.S. 28A-25-1 or G.S. 28A-25-1.1 shall fail to make distribution or file affidavit as required by G.S. 28A-25-3, the clerk of superior court may, upon his own motion or at the request of any interested person, issue an attachment against him for a contempt and commit him until he makes proper distribution and files the affidavit. In addition to or in lieu of filing this attachment, the clerk may require the heir or creditor ~~or devisee~~ to post a bond conditioned as provided in G.S. 28A-8-2."

Sec. 5. G.S. 28A-25-5 reads as rewritten:

"§ 28A-25-5. **Subsequently appointed personal representative or collector.**—Nothing in this Article shall preclude any interested person, including the affiant, from petitioning the clerk of superior court for the appointment of a personal representative or collector to conclude the administration of the decedent's estate. If such is done, the affiant who has been collecting personal property by affidavit shall cease to do so, shall deliver all assets in his possession to the personal representative, and shall render a proper accounting to the personal representative or collector. A copy of the accounting shall also be filed with the clerk having jurisdiction over the personal representative or collector."

Sec. 6. This act shall become effective October 1, 1987, and shall apply to all cases in which an affidavit under G.S. 28A-25-1 or G.S. 28A-25-1.1 is first filed after that date.

In the General Assembly read three times and ratified this the 24th day of July, 1987.