

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

1

SENATE BILL 837

Short Title: Notice to Decedents' Creditors.

(Public)

Sponsors: Senator Ezzell.

Referred to: Judiciary III.

April 11, 1989

A BILL TO BE ENTITLED

AN ACT TO AMEND LAWS CONCERNING NOTICE TO KNOWN OR
REASONABLY ASCERTAINABLE CREDITORS OF DECEDENTS' ESTATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-14-1 reads as rewritten:

"§ 28A-14-1. Notice for claims.

(a) Every personal representative and collector ~~within 20 days~~ after the granting of letters shall notify all persons, firms and corporations having claims against the decedent to present the same to such personal representative or collector, on or before a day to be named in such notice, which day must be a least six months from the day of the first publication or posting of such notice. The notice shall set out a mailing address for the personal representative or collector. The notice shall be published once a week for four consecutive weeks in a newspaper qualified to publish legal advertisements, if any such newspaper is published in the county. If there is no newspaper published in the county, but there is a newspaper having general circulation in the county, then at the option of the personal representative, or collector, the notice shall be published once a week for four consecutive weeks in the newspaper having general circulation in the county and posted at the courthouse or the notice shall be posted at the courthouse and four other public places in the county. Personal representatives are not required to publish or mail notice to creditors if the only asset of the estate consists of a claim for damages arising from death by wrongful act. When any collector or personal representative of an estate has published or mailed the notice provided for by this section, no further publication or mailing shall be required by any other collector or personal representative.

1 (b) Every personal representative and collector ~~within 90 days after the granting of~~
2 ~~letters shall send~~ shall personally deliver or send by first class mail to the last known
3 address a copy of the notice required by subsection (a) of this section to all persons,
4 firms, and corporations having unsatisfied claims against the decedent who are actually
5 known or can be reasonably ascertained by the personal representative or collector
6 ~~within the 90 days~~ 75 days after the granting of letters.

7 (c) The personal representative or collector may personally deliver or mail by
8 first class mail a copy of the notice required by subsection (a) of this section to all
9 creditors of the estate whose names and addresses can be ascertained with reasonable
10 diligence. If the personal representative or collector in good faith believes that the
11 notice required by subsection (b) of this section to a particular creditor is or may be
12 required and gives notice based on that belief, the personal representative or collector is
13 not liable to any person for giving the notice, whether or not the notice is actually
14 required by subsection (b) of this section. If the personal representative or collector in
15 good faith fails to give notice required by subsection (b) of this section, the personal
16 representative or collector is not liable to any person for such failure."

17 Sec. 2. G.S. 28A-14-2 reads as rewritten:

18 "**§ 28A-14-2. Proof of notice.**

19 A copy of the notice directed by G.S. 28A-14-1(a) to be posted or published,
20 together with an affidavit or affidavits of one of the persons authorized by G.S. 1-600(a)
21 to make affidavits to the effect that such notice was posted or published in accordance
22 with G.S. 28A-14-1(a), and an affidavit of the personal representative or collector, or
23 the attorney for the personal representative or collector, to the effect that a copy of the
24 notice was personally delivered or mailed to each creditor entitled to notice in
25 accordance with G.S. 28A-14-1(b) shall be filed in the office of the clerk of superior
26 court by the personal representative or collector at the time the inventory required by
27 G.S. 28A-20-1 is filed or at such time thereafter as the requirements of G.S. 28A-14-1
28 have been met. The copy of the notice, together with the affidavit or affidavits, shall be
29 deemed a record of the court and a copy thereof, duly certified by the clerk of superior
30 court, shall be received as **prima facie** evidence of the fact of publication or mailing in
31 all the courts of this State."

32 Sec. 3. G.S. 28A-19-3 reads as rewritten:

33 "**§ 28A-19-3. Limitations on presentation of claims.**

34 (a) All claims against a decedent's estate which arose before the death of the
35 decedent, except contingent claims based on any warranty made in connection with the
36 conveyance of real estate and claims of the United States and tax claims of the State of
37 North Carolina and subdivisions thereof, whether due or to become due, absolute or
38 contingent, liquidated or unliquidated, secured or unsecured, founded on contract, tort,
39 or other legal basis, which are not presented to the personal representative or collector
40 pursuant to G.S. 28A-19-1 by the date specified in the general notice to creditors as
41 provided for in G.S. 28A-14-1(a) or in those cases requiring the deliver or mailing of
42 notice as provided for in G.S. 28A-14-1(b), within 90 days after the date of the delivery
43 or mailing of the notice if the expiration of said 90-day period is later than the date
44 specified in the general notice to creditors, are forever barred against the estate, the

1 personal representative, the collector, the heirs, and the devisees of the decedent.
2 Provided further, if the expiration of said 90-day period is later than the date specified in
3 the general notice to creditors, the notice delivered or mailed to each creditor, if any,
4 shall be accompanied by a statement which specifies the deadline for filing the claim of
5 the affected creditor.

6 (b) All claims against a decedent's estate which arise at or after the death of the
7 decedent, except claims of the United States and tax claims of the State of North
8 Carolina and subdivisions thereof whether due or to become due, absolute or contingent,
9 liquidated or unliquidated, secured or unsecured, founded on contract, tort, or other
10 legal basis are forever barred against the estate, the personal representative, the
11 collector, the heirs, and the devisees of the decedent unless presented to the personal
12 representative or collector as follows:

13 (1) With respect to any claim based on a contract with the personal
14 representative or collector, within six months after the date on which
15 performance by the personal representative or collector is due;

16 (2) With respect to any claim other than a claim based on a contract with
17 the personal representative or collector, within six months after the
18 date on which the claim arises.

19 ~~No~~ Except as otherwise provided by subsection (f) of this section, no claim
20 shall be barred by the statute of limitations which was not barred thereby at the time of
21 the decedent's death, if the claim is presented within the period provided by subsection
22 (a) hereof.

23 (d) All claims of creditors upon whom there has been personal service of notice
24 as provided in G.S. 28A-14-3 are forever barred unless presented to the personal
25 representative or collector within the time and manner set out in this Article.

26 ~~Unless~~ Except as otherwise provided by subsection (f) of this section, unless a
27 claim has been presented pursuant to G.S. 28A-19-1 giving notice of an action or
28 special proceeding pending against a decedent at the time of his death and surviving
29 under G.S. 28A-18-1 by the date specified in the general notice to creditors as provided in
30 G.S. 28A-14-1 within the time provided by subsection (a) of this section, no recovery
31 may be had upon any judgment obtained in any such action or proceeding against the
32 estate, the personal representative, the collector, the heirs, and the devisees of the
33 decedent.

34 (f) All claims barrable under the provisions of subsections (a) and (b) hereof
35 shall, in any event, be barred if the first publication or posting of the general notice to
36 creditors as provided for in G.S. 28A-14-1 does not occur within three years after the
37 death of the decedent.

38 (g) Nothing in this section affects or prevents any action or proceeding to enforce
39 any mortgage, deed of trust, pledge, lien (including judgment lien), or other security
40 interest upon any property of the decedent's estate, but no deficiency judgment will be
41 allowed if the provisions of this section are not complied with.

42 (h) The word 'claim' as used in this section does not apply to claims of heirs or
43 devisees to their respective shares or interests in the decedent's estate in their capacity as
44 such heirs or devisees.

- 1 (i) Nothing in this section shall bar:
2 (1) Any claim alleging the liability of the decedent or personal
3 representative; or
4 (2) Any proceeding or action to establish the liability of the decedent or
5 personal representative; or
6 (3) The recovery on any judgment against the decedent or personal
7 representative
8 to the extent that the decedent or personal representative is protected by insurance
9 coverage with respect to such claim, proceeding or judgment."

10 Sec. 4. This act is effective upon ratification and shall apply to the
11 administration of the estates of all decedents dying on or after said date.