

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 329

Judiciary II Committee Substitute Adopted 3/24/99

Short Title: New Lapse Statute.

(Public)

Sponsors:

Referred to:

March 11, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE NORTH CAROLINA'S LAPSE STATUTE LESS RESTRICTIVE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 31-42 reads as rewritten:

**"§ 31-42. Failure of devises and legacies by lapse or otherwise; renunciation.**

(a) ~~Unless a contrary intent is indicated by the will, where a devise or legacy of any interest in property is given to a person as an individual or as a member of a class and the person dies survived by qualified issue before the testator dies, then the qualified issue of such deceased person that survive the testator shall represent the deceased person, and the entire interest that the deceased person would have taken had he survived the testator shall pass by substitution to his qualified issue. The qualified issue shall take pursuant to the preceding sentence regardless of whether or not the deceased person dies before or after the making of the will. Where a devise or legacy of any interest in property is given to a person as a member of a class and the person predeceases the testator and is not survived by qualified issue, then, unless a contrary intent is indicated by the will, the entire interest of such person shall devolve upon the members of the class who survived the testator and the qualified issue of any members of the class who predeceased the testator, taking by substitution as herein provided.~~

1 (b) ~~The term "qualified issue" as used in subsection (a) means issue of the deceased~~  
2 ~~person who would have been an heir of the testator under the provisions of the Intestate~~  
3 ~~Succession Act had there been no will.~~

4 (e) ~~If subsection (a) is not applicable and if a contrary intent is not indicated by the~~  
5 ~~will:~~

6 (1) ~~Where a devise or legacy of any interest in property is void, is revoked,~~  
7 ~~or lapses or which for any other reason fails to take effect, such a devise~~  
8 ~~or legacy shall pass:~~

9 a. ~~Under the residuary clause of the will applicable to real property~~  
10 ~~in case of such devise, or applicable to personal property in case~~  
11 ~~of such legacy, or~~

12 b. ~~As if the testator had died intestate with respect thereto when~~  
13 ~~there is no such applicable residuary clause; and~~

14 (2) ~~Where a residuary devise or legacy is void, revoked, lapsed or for any~~  
15 ~~other reason fails to take effect with respect to any devisee or legatee~~  
16 ~~named in the residuary clause itself or a member of a class described~~  
17 ~~therein, then such devise or legacy shall continue as a part of the residue~~  
18 ~~and shall pass to the other residuary devisees or legatees if any; or, if~~  
19 ~~none, shall pass as if the testator had died intestate with respect thereto.~~

20 (d) ~~Renunciation of a devise or legacy shall be as provided for in Chapter 31B of~~  
21 ~~the General Statutes.~~

22 (a) Unless the will indicates a contrary intent, if a devisee predeceases the  
23 testator, whether before or after the execution of the will, and if the devisee is a  
24 grandparent of or a descendant of a grandparent of the testator, then the issue of the  
25 predeceased devisee shall take in place of the deceased devisee. The devisee's issue shall  
26 take the deceased devisee's share in the same manner that the issue would take as heirs of  
27 the deceased devisee under the intestacy provisions in effect at the time of the testator's  
28 death. The provisions of this section apply whether the devise is to an individual, to a  
29 class, or is a residuary devise. In the case of the class devise, the issue shall take  
30 whatever share the deceased devisee would have taken had the devisee survived the  
31 testator.

32 (b) Unless the will indicates a contrary intent, if the provisions of subsection (a) of  
33 this section do not apply to a devise to a devisee who predeceases the testator, or if a  
34 devise otherwise fails, the property shall pass to the residuary devisee or devisees in  
35 proportion to their share of the residue. If the devise is a residuary devise, it shall  
36 augment the shares of the other residuary devisees, including the shares of any substitute  
37 takers under subsection (a) of this section. If there are no residuary devisees, then the  
38 property shall pass by intestacy.

39 (c) Renunciation of a devise is as provided for in Chapter 31B of the General  
40 Statutes.

41 (d) As used in this section, 'devisee' means any person entitled to take real or  
42 personal property under the provisions of a will."

1                   Section 2. This act becomes effective January 1, 2000, and applies to estates  
2 of decedents dying on or after that date.