

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 889  
House Committee Substitute Favorable 6/15/89

Short Title: Estate/Property Collection.

(Public)

Sponsors:

Referred to:

April 17, 1989

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR COLLECTION OF PROPERTY IN DECEDENTS'  
3 ESTATES BY DEVISEES, PUBLIC ADMINISTRATORS, AND EXECUTORS.

4 The General Assembly of North Carolina enacts:

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

6 "(a) When a decedent dies intestate leaving personal property, less liens and  
7 encumbrances thereon, not exceeding ten thousand dollars (\$10,000) in value, at any  
8 time after 30 days from the date of death, any person indebted to the decedent or having  
9 possession of tangible personal property or an instrument evidencing a debt, obligation,  
10 stock or chose in action belonging to the decedent shall make payment of the  
11 indebtedness or deliver the tangible personal property or an instrument evidencing a  
12 debt, obligation, stock or chose in action to a person claiming to be the public  
13 administrator appointed pursuant to G.S. 28A-12-1, or an heir or creditor of the  
14 decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of  
15 an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir  
16 or creditor or the public administrator stating:

- 17 (1) The name and address of the affiant and the fact that he or she is the  
18 public administrator or an heir or creditor of the decedent;
- 19 (2) The name of the decedent and his residence at time of death;
- 20 (3) The date and place of death of the decedent;
- 21 (4) That 30 days have elapsed since the death of the decedent;

- 1 (5) That the value of all the personal property owned by the estate of the  
2 decedent, less liens and encumbrances thereon, does not exceed ten  
3 thousand dollars (\$10,000);  
4 (6) That no application or petition for appointment of a personal  
5 representative is pending or has been granted in any jurisdiction;  
6 (7) The names and addresses of those persons who are entitled, under the  
7 provisions of the Intestate Succession Act, to the personal property of  
8 the decedent and their relationship, if any, to the decedent; and  
9 (8) A description sufficient to identify each tract of real property owned  
10 by the decedent at the time of his death."

11 Sec. 2. G.S. 28A-25-1.1(a) reads as rewritten:

12 "(a) When a decedent dies testate leaving personal property, less liens  
13 and encumbrances thereon, not exceeding ten thousand dollars (\$10,000) in value, at  
14 any time after 30 days from the date of death, any person indebted to the decedent or  
15 having possession of tangible personal property or an instrument evidencing a debt,  
16 obligation, stock or chose in action belonging to the decedent shall make payment of the  
17 indebtedness or deliver the tangible personal property or an instrument evidencing a  
18 debt, obligation, stock or chose in action to a person claiming to be ~~an~~the public  
19 administrator appointed pursuant to G.S. 28A-12-1, a person named or designated as  
20 executor in the will, devisee, heir or creditor, of the decedent, not disqualified under  
21 G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance  
22 with subsection (b) and made by or on behalf of the ~~heir or creditor,~~ heir, the person  
23 named or designated as executor in the will of the decedent, the creditor, the public  
24 administrator, or the devisee, stating:

- 25 (1) The name and address of the affiant and the fact that he is ~~an~~the public  
26 administrator, a person named or designated as executor in the will,  
27 devisee, heir or creditor, of the decedent;  
28 (2) The name of the decedent and his residence at time of death;  
29 (3) The date and place of death of the decedent;  
30 (4) That 30 days have elapsed since the death of the decedent;  
31 (5) That the decedent died testate leaving personal property, less liens and  
32 encumbrances thereon, not exceeding ten thousand dollars (\$10,000)  
33 in value;  
34 (6) That the decedent's will has been admitted to probate in the court of  
35 the proper county and a duly certified copy of the will has been  
36 recorded in each county in which is located any real property owned  
37 by the decedent at the time of his death;  
38 (7) That a certified copy of the decedent's will is attached to the affidavit;  
39 (8) That no application or petition for appointment of a personal  
40 representative is pending or has been granted in any jurisdiction;  
41 (9) The names and addresses of those persons who are entitled, under the  
42 provisions of the ~~will~~will, or if applicable, of the Intestate Succession  
43 Act, to the property of the decedent; and their relationship, if any, to  
44 the decedent; and

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

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

4 **"§ 28A-25-3. Disbursement and distribution of property collected by affidavit.**

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

8 (1) Disburse and distribute the same in the following order:

- 9 a. To the payment of the surviving spouse's year's allowance and  
10 the children's year's allowance assigned in accordance with G.S.  
11 30-15 through 30-33;
- 12 b. To the payment of the debts and claims against the estate of the  
13 decedent in the order of priority set forth in G.S. 28A-19-6, or  
14 to the reimbursement of any person who has already made  
15 payment thereof;
- 16 c. To the distribution of the remainder of the personal property to  
17 the persons entitled thereto under the provisions of the will or of  
18 the Intestate Succession Act; and

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

29 (b) Nothing in this section shall be construed as changing the rule of G.S. 28A-  
30 15-1 and G.S. 28A-15-5 rendering both real and personal property, without preference  
31 or priority, available for the discharge of debts and other claims against the estate of the  
32 decedent. If it appears that it may be in the best interest of the estate to sell, lease, or  
33 mortgage any real property to obtain money for the payment of debts or other claims  
34 against the decedent's estate, the affiant shall petition the clerk of superior court for the  
35 appointment of a personal representative to conclude the administration of the  
36 decedent's estate pursuant to G.S. 28A-25-5."

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

38 **"§ 28A-25-4. Clerk may compel compliance.**

39 If any ~~heir or creditor-affiant~~ who has collected personal property of the decedent by  
40 affidavit pursuant to G.S. 28A-25-1 or G.S. 28A-25-1.1 shall fail to make distribution or  
41 file affidavit as required by G.S. 28A-25-3, the clerk of superior court may, upon his  
42 own motion or at the request of any interested person, issue an attachment against him  
43 for a contempt and commit him until he makes proper distribution and files the

- 1 affidavit. In addition to or in lieu of filing this attachment, the clerk may require the heir  
2 ~~or creditor~~ affiant to post a bond conditioned as provided in G.S. 28A-8-2."  
3           Sec. 5. This act shall become effective October 1, 1989, and shall apply to  
4 persons dying on or after that date.