

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-364
HOUSE BILL 1084**

**AN ACT TO CLARIFY THAT AN ACTION FOR EQUITABLE DISTRIBUTION
DOES NOT ABATE UPON THE DEATH OF A PARTY.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-21(a) reads as rewritten:

"(a) At any time after a husband and wife begin to live separate and apart from each other, a claim for equitable distribution may be ~~filed, filed and adjudicated,~~ either as a separate civil action, or together with any other action brought pursuant to Chapter 50 of the General Statutes, or as a motion in the cause as provided by G.S. 50-11(e) or (f). Within 90 days after service of a claim for equitable distribution, the party who first asserts the claim shall prepare and serve upon the opposing party an equitable distribution inventory affidavit listing all property claimed by the party to be marital property and all property claimed by the party to be separate property, and the estimated date-of-separation fair market value of each item of marital and separate property. Within 30 days after service of the inventory affidavit, the party upon whom service is made shall prepare and serve an inventory affidavit upon the other party. The inventory affidavits prepared and served pursuant to this subsection shall be subject to amendment and shall not be binding at trial as to completeness or value. The court may extend the time limits in this subsection for good cause shown. The affidavits are subject to the requirements of G.S. 1A-1, Rule 11, and are deemed to be in the nature of answers to interrogatories propounded to the parties. Any party failing to supply the information required by this subsection in the affidavit is subject to G.S. 1A-1, Rules 26, 33, and 37. During the pendency of the action for equitable distribution, discovery may proceed, and the court shall enter temporary orders as appropriate and necessary for the purpose of preventing the disappearance, waste, or destruction of marital or separate property or to secure the possession thereof.

Real or personal property located outside of North Carolina is subject to equitable distribution in accordance with the provisions of G.S. 50-20, and the court may include in its order appropriate provisions to ensure compliance with the order of equitable distribution."

SECTION 2. G.S. 50-20 is amended by adding a new subsection to read:

"(l) A pending action for equitable distribution shall not abate upon the death of a party."

SECTION 3. G.S. 50-20(c) reads as rewritten:

"(c) There shall be an equal division by using net value of marital property and net value of divisible property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property and divisible property equitably. ~~Factors the~~ The court shall consider all of the following factors under this subsection are as follows: ~~subsection:~~

- (1) The income, property, and liabilities of each party at the time the division of property is to become ~~effective;~~ effective.
- (2) Any obligation for support arising out of a prior ~~marriage;~~ marriage.
- (3) The duration of the marriage and the age and physical and mental health of both ~~parties;~~ parties.

- (4) The need of a parent with custody of a child or children of the marriage to occupy or own the marital residence and to use or own its household ~~effects;effects.~~
- (5) The expectation of pension, retirement, or other deferred compensation rights that are not marital ~~property;property.~~
- (6) Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services, or lack thereof, as a spouse, parent, wage earner or ~~homemaker;homemaker.~~
- (7) Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other ~~spouse;spouse.~~
- (8) Any direct contribution to an increase in value of separate property which occurs during the course of the ~~marriage;marriage.~~
- (9) The liquid or nonliquid character of all marital property and divisible ~~property;property.~~
- (10) The difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest, intact and free from any claim or interference by the other ~~party;party.~~
- (11) The tax consequences to each ~~party;party.~~
- (11a) Acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, devalue or convert the marital property or divisible property, or both, during the period after separation of the parties and before the time of ~~distribution; anddistribution.~~
- (11b) In the event of the death of either party prior to the entry of any order for the distribution of property made pursuant to this subsection:
 - a. Property passing to the surviving spouse by will or through intestacy due to the death of a spouse.
 - b. Property held as tenants by the entirety or as joint tenants with rights of survivorship passing to the surviving spouse due to the death of a spouse.
 - c. Property passing to the surviving spouse from life insurance, individual retirement accounts, pension or profit-sharing plans, any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary (excluding any benefits under the federal social security system), or any other retirement accounts or contracts, due to the death of a spouse.
 - d. The surviving spouse's right to claim an "elective share" pursuant to G.S. 30-3.1 through G.S. 30-33, unless otherwise waived.
- (12) Any other factor which the court finds to be just and proper."

SECTION 4. G.S. 30-3.2(d) reads as rewritten:

"(d) "Total Net Assets" means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, ~~claims, claims other than an equitable distribution of property awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent,~~ and administration expenses, the sum of the following:

- (1) All property to which the decedent had legal and equitable title immediately prior to death;
- (2) All property received by the decedent's personal representative by reason of the decedent's death, other than wrongful death proceeds;

- (3) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;
- (4) The entire value of any interest in property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;
- (5) The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, or 2040 of the Code.
- (6) Any donative transfers of property made by the decedent to donees other than the surviving spouse within six months of the decedent's death, excluding:
 - a. Any gifts within the annual exclusion provisions of section 2503 of the Code;
 - b. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent; and
 - c. Any gifts made prior to marriage;
- (7) Any proceeds of any individual retirement account, pension or profit-sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;
- (8) Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and
- (9) In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value."

SECTION 5. G.S. 30-3.3(a) reads as rewritten:

- "(a) Property Passing to Surviving Spouse. – For purposes of this Article, "Property Passing to Surviving Spouse" means the sum of the following:
- (1) One-half of the value of any interest in property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;
 - (2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;
 - (3) Any year's allowance awarded to the surviving spouse;
 - (4) The value of any property renounced by the surviving spouse;
 - (5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;
 - (6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint

- tenants with right of survivorship shall be valued at one-half of the entire value of that interest in property at the time the gift is made; ~~and~~
- (7) The entire value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, where the trust requires a Nonadverse Trustee to utilize the principal and income of the trust for the support and maintenance of the surviving ~~spouse-spouse~~; and
- (8) The net value of the marital estate awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent."

SECTION 6. G.S. 29-14 is amended by adding a new subsection to read:

"(c) When an equitable distribution of property is awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent, the share of the surviving spouse determined under subsections (a) and (b) of this section shall be first determined as though no property had been awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent, and then reduced by the net value of the marital estate awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent."

SECTION 7. This act is effective when it becomes law and applies to actions pending or filed on or after that date.

In the General Assembly read three times and ratified this the 1st day of August, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:47 a.m. this 10th day of August, 2001