

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 606
Judiciary I Committee Substitute Adopted 5/5/09
House Committee Substitute Favorable 6/30/09
House Committee Substitute #2 Favorable 7/13/09

Short Title: Notice to Creditors Without Estate Admin.

(Public)

Sponsors:

Referred to:

March 16, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A PROCEDURE FOR PROVIDING NOTICE TO CREDITORS
3 WITHOUT ESTATE ADMINISTRATION WHEN A DECEDENT DIES LEAVING NO
4 PROPERTY SUBJECT TO PROBATE AND TO MAKE A TECHNICAL CORRECTION
5 TO THE PROVISION PROVIDING FOR COSTS IN THE ADMINISTRATION OF
6 ESTATES.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. Chapter 28A of the General Statutes is amended by adding a new
9 Article to read:

10 "Article 29.

11 "Notice to Creditors Without Estate Administration.

12 "**§ 28A-29-1. Notice to creditors without estate administration.**

13 When a decedent dies testate or intestate leaving no property subject to probate, any person
14 otherwise qualified to serve as personal representative of the estate pursuant to Article 4 of this
15 Chapter or the trustee then serving under the terms of a revocable trust created by the decedent
16 may file a petition to be appointed as a limited personal representative to provide notice to
17 creditors without administration of an estate before the clerk of superior court of the county
18 where the decedent was domiciled at the time of death. This procedure is not available if the
19 decedent's will provides that it is not available. A limited personal representative shall have the
20 rights and obligations provided for in this Article.

21 "**§ 28A-29-2. Petition.**

22 (a) The application for appointment as limited personal representative shall be in the
23 form of an affidavit sworn to before an officer authorized to administer oaths, signed by the
24 applicant or the applicant's attorney, which may be supported by other proof under oath in
25 writing, all of which shall be recorded and filed by the clerk of superior court, and shall allege
26 all of the following facts:

27 (1) The name and domicile of the decedent at the time of death.

28 (2) The date and place of death of the decedent.

29 (3) That, so far as is known or can with reasonable diligence be ascertained, the
30 decedent's property is not subject to probate.

31 (4) That no application or petition for appointment of a personal representative
32 is pending or has been granted in this State.

33 (b) If it appears to the clerk of superior court that the application and supporting
34 evidence comply with the requirements of subsection (a) of this section and on the basis thereof



1 the clerk finds that the applicant is entitled to appointment, the clerk shall issue letters of
2 limited administration.

3 (c) The petition shall be filed by the clerk upon payment of the fee provided in
4 G.S. 7A-307(a) and shall be indexed in the index to estates.

5 **"§ 28A-29-3. Effect of appointment.**

6 A limited personal representative appointed under this Article shall provide notice to all
7 persons, firms, and corporations having claims against the decedent, and proof of such notice
8 shall be in accordance with the provisions of Article 14 of this Chapter.

9 **"§ 28A-29-4. Presentation, payment, and limitation of claims.**

10 Upon compliance with G.S. 28A-29-3, creditors of the decedent and the decedent's property
11 shall present claims in accordance with the provisions of Article 19 of this Chapter, and
12 creditors failing to file such claims shall be barred as provided in G.S. 28A-19-3. The limited
13 personal representative shall administer claims so presented in accordance with the procedures
14 and priorities provided pursuant to Article 19 of this Chapter. At any time after a claim is
15 presented in accordance with the provisions of this section, the clerk may appoint a personal
16 representative to administer the decedent's estate.

17 **"§ 28A-29-5. Right to petition for appointment of personal representative.**

18 Nothing in this Article shall preclude any person qualified to serve as personal
19 representative pursuant to G.S. 28A-4-1, including the limited personal representative, from
20 petitioning the clerk of superior court for the appointment of a personal representative to
21 administer the decedent's estate."

22 **SECTION 2.** Article 21 of Chapter 28A of the General Statutes is amended by
23 adding a new section to read:

24 **"§ 28A-21-2.2. Final accounting by limited personal representative.**

25 (a) Filing Requirement. – A limited personal representative appointed pursuant to
26 Article 29 of this Chapter shall file a sworn affidavit or report listing all debts and other claims
27 duly presented to the limited personal representative and providing proof that the debts and
28 other claims were satisfied, compromised, or denied, and that the time for filing suit thereon
29 has expired. The sworn affidavit or report shall be filed within 30 days of the later of the
30 following:

- 31 (1) The date by which a claim must be presented as set forth in the general
32 notice to creditors provided for in G.S. 28A-14-1.
- 33 (2) The date by which an action for recovery of a rejected claim must be
34 commenced under G.S. 28A-19-6.

35 (b) Action by Clerk. – The affidavit or report shall be reviewed and recorded by the
36 clerk of superior court. Following the review, the clerk of superior court shall take one of the
37 following actions:

- 38 (1) Discharge the limited personal representative from office.
- 39 (2) Require the filing of any additional information or documents determined by
40 the clerk to be necessary to the understanding of the affidavit or report.
- 41 (3) Order the full administration of the decedent's estate and appoint a personal
42 representative."

43 **SECTION 3.** G.S. 7A-307(a) reads as rewritten:

44 "(a) In the administration of the estates of decedents, minors, incompetents, of missing
45 persons, and of trusts under wills and under powers of attorney, in trust proceedings under
46 ~~G.S. 36A-23-1~~, G.S. 36C-2-203, and in collections of personal property by affidavit, the
47 following costs shall be assessed:

- 48 (1) For the use of the courtroom and related judicial facilities, the sum of ten
49 dollars (\$10.00), to be remitted to the county. Funds derived from the
50 facilities fees shall be used in the same manner, for the same purposes, and
51 subject to the same restrictions, as facilities fees assessed in criminal actions.

- 1 (1a) For the upgrade, maintenance, and operation of the judicial and county
2 courthouse phone systems, the sum of one dollar (\$1.00), to be credited to
3 the Court Information Technology Fund.
- 4 (2) For support of the General Court of Justice, the sum of fifty dollars (\$50.00),
5 plus an additional forty cents (40¢) per one hundred dollars (\$100.00), or
6 major fraction thereof, of the gross estate, not to exceed six thousand dollars
7 (\$6,000). Gross estate shall include the fair market value of all personalty
8 when received, and all proceeds from the sale of realty coming into the
9 hands of the fiduciary, but shall not include the value of realty. In collections
10 of personal property by affidavit, the fee based on the gross estate shall be
11 computed from the information in the final affidavit of collection made
12 pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In
13 all other cases, this fee shall be computed from the information reported in
14 the inventory and shall be paid when the inventory is filed with the clerk. If
15 additional gross estate, including income, comes into the hands of the
16 fiduciary after the filing of the inventory, the fee for such additional value
17 shall be assessed and paid upon the filing of any account or report disclosing
18 such additional value. For each filing the minimum fee shall be fifteen
19 dollars (\$15.00). Sums collected under this subdivision shall be remitted to
20 the State Treasurer. The State Treasurer shall remit the sum of two dollars
21 and five cents (\$2.05) of each fifty-dollar (\$50.00) General Court of Justice
22 fee collected under this subdivision to the North Carolina State Bar for the
23 provision of services described in G.S. 7A-474.4.
- 24 (2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents
25 (40¢) per one hundred dollars (\$100.00), or major fraction, of the gross
26 estate, not to exceed six thousand dollars (\$6,000), shall not be assessed on
27 personalty received by a trust under a will when the estate of the decedent
28 was administered under Chapters 28 or 28A of the General Statutes. Instead,
29 a fee of twenty dollars (\$20.00) shall be assessed on the filing of each annual
30 and final account. However, the fee shall be assessed only on newly
31 contributed or acquired assets, all interest or other income that accrues or is
32 earned on or with respect to any existing or newly contributed or acquired
33 assets, and realized gains on the sale of any and all trust assets. Newly
34 contributed or acquired assets do not include assets acquired by the sale,
35 transfer, exchange, or otherwise of the amount of trust property on which
36 fees were previously assessed.
- 37 (2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be
38 assessed when the estate is administered or settled pursuant to
39 G.S. 28A-25-6.
- 40 (2c) Notwithstanding subdivision (2) of this subsection, the fee of forty cents
41 (40¢) per one hundred dollars (\$100.00), or major fraction, of the gross
42 estate shall not be assessed on the gross estate of a trust that is the subject of
43 a proceeding under ~~G.S. 36A-23-1~~G.S. 36C-2-203 if there is no requirement
44 in the trust that accountings be filed with the clerk.
- 45 (2d) Notwithstanding subdivisions (1) and (2) of this subsection, the only cost
46 assessed in connection with the qualification of a limited personal
47 representative under G.S. 28A-29-1 shall be a fee of twenty dollars (\$20.00)
48 to be assessed upon the filing of the petition.
- 49 (3) For probate of a will without qualification of a personal representative, the
50 clerk shall assess a facilities fee as provided in subdivision (1) of this

1 subsection and shall assess for support of the General Court of Justice, the
2 sum of twenty dollars (\$20.00)."
3 **SECTION 4.** This act becomes effective October 1, 2009, and applies to estates of
4 persons dying on or after that date.