

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS55236-LL-78 (2/11)

Short Title: Effect of Caveat on Estate Administration.

(Public)

Sponsors: Senator Berger of Rockingham.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW FOR CERTAIN PAYMENTS OF AN ESTATE WHILE A CAVEAT
3 IS PENDING.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 31-36 reads as rewritten:

6 "§ 31-36. ~~Caveat suspends proceedings under will.~~ Effect of caveat on estate
7 administration.

8 (a) Order of Clerk. – Where a caveat is entered and bond given, the clerk of the superior
9 court shall forthwith issue an order that shall apply during the pendency of the caveat to any
10 personal representative, having the estate in charge, ~~to suspend all further proceedings in~~
11 ~~relation to the estate, except the preservation of the property and the collection of debts and~~
12 ~~payment of all taxes and debts that are a lien upon the property of the decedent, as may be~~
13 ~~allowed by order of the clerk of the superior court, until a decision of the issue is had as~~
14 follows:

- 15 (1) Distributions to beneficiaries. – That there shall be no distributions of assets
16 of the estate to any beneficiary;
17 (2) Commissions. – That no commissions shall be advanced or awarded to any
18 personal representative;
19 (3) Accountings. – That the personal representative shall file all accountings
20 required by the clerk of superior court and that the personal representative
21 may pay any applicable filing fees associated with those accountings from
22 the assets of the estate;
23 (4) Preservation of estate assets. – That the personal representative shall
24 preserve the property of the estate and that the personal representative is
25 authorized to pursue and prosecute claims that the estate may have against
26 others; and
27 (5) Taxes, claims and debts of estate. – That the personal representative may file
28 all appropriate tax returns and that the personal representative may pay, in
29 accordance with the procedures of subsection (b) of this section: taxes;
30 funeral expenses of the decedent; debts that are a lien upon the property of
31 the decedent; bills of the decedent accrued before death; claims against the
32 estate that are timely filed; professional fees related to administration of the
33 estate, including fees for tax return preparation, appraisal fees, and attorneys'
34 fees for estate administration.



1 (b) Procedures. – In regard to payment of any of the items listed in subdivision (5) of
2 subsection (a) of this section, the personal representative shall file with the clerk a notice of the
3 personal representative's intent to pay those items and shall serve the notice upon all parties to
4 the caveat, pursuant to Rule 4 of the Rules of Civil Procedure. If within 10 days of service any
5 party files with the clerk a written objection to that payment, the clerk shall schedule a hearing
6 and determine whether the proposed payment shall be made. If no such objection is filed with
7 the clerk, the clerk may approve the payment without hearing, and upon that approval, the
8 personal representative may make the payment. The parties to the caveat may consent to any
9 such payment, and upon such consent, the clerk may approve the payment without hearing. The
10 clerk may defer ruling on the payment pending the resolution of the caveat.

11 (c) Preservation of Estate Assets. – Questions regarding the use, location, and
12 disposition of assets that cannot be resolved by the parties and consented to by the clerk shall
13 be decided by the clerk. When a question has not been resolved by agreement, either party may
14 request a hearing before the clerk upon 10 days notice and shall serve the notice upon all
15 parties to the caveat, pursuant to Rule 4 of the Rules of Civil Procedure. Decisions of the clerk
16 may be appealed to the superior court."

17 **SECTION 2.** This act becomes effective October 1, 2009, and applies to estates of
18 decedents dying on or after that date.