

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 884*
Judiciary II Committee Substitute Adopted 5/11/09

Short Title: Renunciation Amendments.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO RENUNCIATIONS AND TO MAKE RELATED AMENDMENTS TO THE NORTH CAROLINA UNIFORM TRUST CODE AND THE LAW GOVERNING POWERS OF ATTORNEY AND ADMINISTRATION OF DECEDENTS' ESTATES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 31B-1 reads as rewritten:

"§ 31B-1. Right to renounce succession.

(a) A person who succeeds to a property interest as:

(1) ~~Heir, or~~ Heir;

(2) Next of ~~kin, or~~ kin;

(3) ~~Devisee, or~~ Devisee;

(4) ~~Legatee, or~~ Legatee;

(4a) Donee;

(5) Beneficiary of a life insurance policy who did not possess the incidents of ownership under the policy at the time of death of the ~~insured, or~~ insured;

(6) Person succeeding to a renounced ~~interest, or~~ interest;

(7) Beneficiary under a testamentary trust or under an inter vivos ~~trust, or~~ trust;

(8) Appointee under a power of appointment exercised by a testamentary instrument or a nontestamentary ~~instrument, or~~ instrument;

(9) Repealed by Session Laws 1989, c. 684, s. 2.

(9a) Surviving joint tenant, surviving tenant by the entireties, or surviving tenant of a tenancy with a right of ~~survivorship, or~~ survivorship;

(9b) Person entitled to share in a testator's estate under the provisions of ~~G.S. 31-5.5, or~~ G.S. 31-5.5;

(9c) Beneficiary under any other testamentary or nontestamentary instrument, including a beneficiary under:

a. Any qualified or nonqualified deferred compensation, employee benefit, retirement or death benefit, plan, fund, annuity, contract, policy, program or instrument, either funded or unfunded, which is established or maintained to provide retirement income or death benefits or results in, or is intended to result in, deferral of income;

b. An individual retirement account or individual retirement annuity; or

c. Any annuity, payable on ~~death, death~~ death account, or other right to death benefits arising under ~~contract, or~~ contract;



1 (9d) ~~The duly~~Duly authorized or appointed guardian of any of the persons listed
2 in subdivisions (1) through (9c) of this subsection, but only with the prior or
3 subsequent approval of the clerk of superior court, or if required, of the
4 resident judge of the superior court, of any of the above-pursuant to a
5 proceeding or action instituted in accordance with and subject to the
6 requirements of G.S. 31B-1.2; or

7 (9e) Subject to G.S. 31B-1.1 and G.S. 31B-1.2, fiduciary, including a trustee of a
8 charitable trust, an attorney-in-fact of any of the persons listed in
9 subdivisions (1) through (9e) of this subsection if expressly authorized by
10 the governing power of attorney, and a personal representative appointed
11 under Chapter 28A of the General Statutes of any of the persons listed in
12 subdivisions (1) through (9c) of this subsection;

13 (10) ~~The personal representative appointed under Chapter 28A of any of the~~
14 ~~above, or the attorney in fact of any of the above may renounce at anytime,~~
15 ~~in whole or in part part, the right of succession to any property or interest~~
16 ~~therein, including a future interest, by filing a written instrument under the~~
17 ~~provisions of this Chapter. A renunciation may be of a fractional share or~~
18 ~~any limited interest or estate. The renunciation shall be deemed to include~~
19 ~~the entire interest of the person whose property or interest is being~~
20 ~~renounced unless otherwise specifically limited. A person may renounce any~~
21 ~~interest in or power over property, including a power of appointment, even if~~
22 ~~its creator imposed a spendthrift provision or similar restriction on transfer~~
23 ~~or a restriction or limitation on the right to renounce. Provided, however,~~
24 ~~Notwithstanding the foregoing, there shall be no right of partial renunciation~~
25 ~~if the decedent or donee of the power expressly so provided in the~~
26 ~~instrument creating the interest-interest expressly so provides.~~

27 (b) This Chapter shall apply to all renunciations of present and future interests, whether
28 qualified or nonqualified for federal and State inheritance, estate, and gift tax purposes, unless
29 expressly provided otherwise in the instrument creating the interest.

30 (c) The instrument of renunciation shall (i) identify the transferor of the property or
31 interest in the property or the creator of the power or the holder of the power, (ii) describe the
32 property or interest renounced, (iii) declare the renunciation and extent thereof, (iii)and (iv)
33 be signed and acknowledged by the person authorized to renounce-renouncing.

34 (d) A parent of a minor for whom no general guardian or guardian of the estate has been
35 appointed may renounce, in whole or in part, an interest in or power over property (including a
36 power of appointment) that would have passed to the minor as the result of that parent's
37 renunciation. The parent may renounce the interest or power even if its creator imposed a
38 spendthrift provision or similar restriction on transfer or a restriction or limitation on the right
39 to renounce."

40 **SECTION 2.** G.S. 31B-1A is recodified as G.S. 31B-1.1. G.S. 31B-1.1, as
41 recodified by this section, reads as rewritten:

42 **"§ 31B-1.1. Right to renounce fiduciary powers. Right of fiduciary to renounce.**

43 (a) Except as otherwise provided in the testamentary or nontestamentary instrument, a
44 fiduciary under a testamentary or nontestamentary instrument may renounce, in whole or in
45 part, fiduciary rights, privileges, powers, and ~~immunities by executing and by delivering, filing,~~
46 ~~or recording a written renunciation pursuant to the provisions of G.S. 31B-2. A immunities;~~
47 ~~however, a fiduciary may not renounce the rights of beneficiaries-personal rights exercisable by~~
48 ~~a beneficiary alone, unless the instrument creating the fiduciary relationship authorizes such a~~
49 ~~renunciation. The instrument of renunciation shall (i) identify the creator of the rights, powers,~~
50 ~~privileges, or immunities, (ii) describe any right, power, privilege, or immunity renounced, (iii)~~

1 declare the renunciation and the extent thereof, and (iv) be signed and acknowledged by the
2 fiduciary authorized to renounce.

3 (b) The instrument of renunciation shall (i) describe any fiduciary right, power,
4 privilege, or immunity renounced, (ii) declare the renunciation and the extent thereof, and (iii)
5 be signed and acknowledged by the fiduciary authorized to renounce. Except as provided in
6 subsection (c) of this section and except to the extent a statute of this State expressly restricts or
7 limits a fiduciary's right to renounce, a fiduciary acting in a fiduciary capacity may renounce
8 the right of succession to any property or interest therein as permitted by this Chapter, even if
9 the testamentary or nontestamentary instrument governing the fiduciary restricts or limits the
10 right to renounce the fiduciary's right of succession to the property or interest therein.

11 (c) An attorney-in-fact for a principal acting under subsection (a) or subsection (b) of
12 this section may renounce only if expressly authorized by the governing power of attorney."

13 **SECTION 3.** Chapter 31B of the General Statutes is amended by adding a new
14 section to read:

15 **"§ 31B-1.2. Right of fiduciary to institute a proceeding for review of renunciation.**

16 (a) Prior to renouncing, if a fiduciary so elects, the fiduciary may institute a proceeding
17 by petition before the clerk of court for a determination as to whether a renunciation would be
18 compatible with the fiduciary's duties. Commencement of the proceeding, jurisdiction, venue,
19 parties, representation, and notice shall be governed by Chapter 36C of the General Statutes. In
20 addition to any other notice requirements, notice of the proceeding shall be given to all persons
21 entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

22 (b) After renouncing, if a fiduciary so elects, the fiduciary has a right to institute a
23 declaratory judgment action pursuant to Article 26 of Chapter 1 of the General Statutes for a
24 determination as to whether the renunciation is compatible with the fiduciary's duties. In
25 addition to any other notice requirements, notice of the action shall be given to all persons
26 entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

27 (c) A proceeding or action instituted under this section shall comply with all of the
28 following:

29 (1) The petition or complaint shall state the basis for the fiduciary's allegation
30 that the renunciation is compatible with the fiduciary's duties, considering
31 among other things the intended purposes of the trust or other instrument and
32 the impact of the renunciation on beneficiaries and potential beneficiaries. A
33 petition or complaint filed by a trustee of a charitable trust shall contain a
34 statement that a copy of the petition or complaint is being provided to the
35 Attorney General.

36 (2) After considering among other things the intended purposes of the trust or
37 other instrument and the impact of the renunciation on beneficiaries and
38 potential beneficiaries, the court shall enter an order stating the court's
39 determination as to whether the renunciation is compatible with the
40 fiduciary's duties.

41 (d) The effectiveness of a renunciation is not affected by a determination under this
42 section that the renunciation is not compatible with a fiduciary's duties."

43 **SECTION 4.** G.S. 31B-2 reads as rewritten:

44 **"§ 31B-2. Time and place of filing renunciation. Filing and registering of renunciations;**
45 **failure to file or register; spouse's interest.**

46 (a) To be a qualified disclaimer for federal and State inheritance, estate, and gift tax
47 purposes, an instrument ~~renouncing a present interest~~ of renunciation shall be filed within the
48 time period required under the applicable federal statute for a renunciation to be given effect as
49 a disclaimer for federal estate and gift tax purposes. If there is no such federal statute the
50 instrument shall be filed not later than nine months after the date the transfer of the renounced

1 interest to the ~~renouncer~~person whose property or interest is being renounced was complete for
2 the purpose of such taxes.

3 (b) ~~An instrument renouncing a future interest shall be filed not later than six months~~
4 ~~after the event by which the taker of the property or interest is finally ascertained and his~~
5 ~~interest indefeasibly vested and he is entitled to possession even though such renunciation may~~
6 ~~not be recognized as a disclaimer for federal estate tax purposes.~~When a renunciation of real
7 property or an interest in real property is made within the time period required under subsection
8 (a) of this section, the spouse of the person whose property or interest is being renounced is not
9 required to join in the execution of the instrument of renunciation, and, as provided in
10 G.S. 31B-3(a)(1), the spouse has no statutory dower, inchoate marital rights, elective share, or
11 any other marital interest in the real property or real property interest renounced.

12 (c) ~~The renunciation shall be effective when filed with the clerk of court of (i) in the~~
13 ~~county in which court proceedings have been commenced for the administration of the estate of~~
14 ~~the deceased owner or deceased donee creator of the power or, if they have not been~~
15 ~~commenced, in which they could be commenced. A copy of the renunciation shall be delivered~~
16 ~~in person or mailed by registered or certified mail to any personal representative, or other~~
17 ~~fiduciary of the decedent or donee of the power. If the property interest renounced includes any~~
18 ~~proceeds of a life insurance policy being renounced pursuant to G.S. 31B-1(a)(5) the person~~
19 ~~renouncing shall mail, by registered or certified mail, a copy of the renunciation to the~~
20 ~~insurance company issuing the policy. If the property or property interest renounced is created~~
21 ~~by nontestamentary instrument, a copy of the renunciation shall be delivered in person, or~~
22 ~~mailed by registered or certified mail, to the trustee or other person who has legal title to, or~~
23 ~~possession of, the property or property interest renounced or holder of the power; or (ii) if~~
24 ~~proceedings have not been commenced, then in a county in which they could be commenced;~~
25 ~~or (iii) in all other cases, in a county with a court that has jurisdiction to enforce the terms of~~
26 ~~the instrument creating the interest renounced. In those cases in which an estate proceeding has~~
27 ~~not been commenced, the renunciation shall be filed as an estate matter. In addition to the~~
28 ~~above requirements, a renunciation of real property, or an interest therein, shall be registered in~~
29 ~~accordance with the provisions of subsection (d) of this section.~~

30 (d) ~~If real property or an interest therein is renounced, a copy of the instrument of~~
31 ~~renunciation shall also be filed for recording in the office of the register of deeds of all counties~~
32 ~~wherein any part of the interest renounced is situated.~~registered as provided in G.S. 47-18 or
33 G.S. 47-20. ~~The instrument of renunciation shall be indexed in the grantor's index under (i) the~~
34 ~~name of the deceased owner transferor or donee creator of the power, power or holder of the~~
35 ~~power, and (ii) the name of the person renouncing person whose property or interest is being~~
36 ~~renounced. The renunciation of an interest, or a part thereof, in real property shall not be~~
37 ~~effective to renounce such interest until a copy of the renunciation is filed for recording in the~~
38 ~~office of the register of deeds in the county wherein such interest or part thereof is situated. A~~
39 ~~spouse of a person renouncing real property or an interest in real property shall have no~~
40 ~~statutory dower, inchoate marital rights, or any other interest in the real property or real~~
41 ~~property interest renounced.~~Failure to file or register the instrument of renunciation does not
42 affect the effectiveness of the renunciation as between the person whose property or interest is
43 being renounced and persons to whom the property interest or power passes by reason of the
44 renunciation; however, record title to a renounced interest in real property does not pass to
45 persons receiving the renounced interest by reason of the renunciation until the instrument of
46 renunciation is registered as provided in G.S. 47-18 or G.S. 47-20.

47 (e) If an instrument transferring an interest in or right, privilege, power, or immunity
48 over property subject to a renunciation is required or permitted by law to be filed or registered,
49 the instrument of renunciation may be so filed or registered. Failure to file or register the
50 instrument of renunciation does not affect the effectiveness of the renunciation as between the

1 person whose property or interest is being renounced and persons to whom the property interest
2 or power passes by reason of the renunciation."

3 **SECTION 5.** Chapter 31B of the General Statutes is amended by adding a new
4 section to read:

5 **"§ 31B-2.1. Delivery to other persons of instrument of renunciation by the person**
6 **renouncing.**

7 (a) In this section:

8 (1) "Beneficiary designation" means an instrument, other than an instrument
9 creating a trust, naming the beneficiary of:

10 a. An annuity or insurance policy;

11 b. An account with a designation for payment on death;

12 c. A security registered in beneficiary form;

13 d. A pension, profitsharing, retirement, or other employment-related
14 benefit plan;

15 e. An individual retirement account or retirement annuity; or

16 f. Any other nonprobate transfer at death.

17 (2) "Deliver" means to deliver in person or to send, properly addressed, by
18 first-class mail, telephonic facsimile transmission equipment, electronic
19 mail, or third-party commercial carrier, or by any method permitted by
20 G.S. 1A-1, Rule 4.

21 (b) The failure to deliver a copy of an instrument of renunciation by a method permitted
22 by G.S. 1A-1, Rule 4, or by a method that results in actual receipt tolls any statute of limitations
23 with regard to any right of action for breach of fiduciary duty.

24 (c) If a fiduciary renounces an interest in property pursuant to G.S. 31B-1(a)(9e), a
25 copy of the instrument of renunciation shall be delivered to each living person whose beneficial
26 interest is affected by the renunciation and to any co-fiduciary who did not join in the
27 renunciation.

28 (d) In the case of an interest created under the law of intestate succession or an interest
29 created by will, other than an interest in a testamentary trust, a copy of the instrument of
30 renunciation must:

31 (1) Be delivered to the personal representative of the decedent's estate; or

32 (2) If no personal representative is then serving, be filed as an estate matter with
33 a court having jurisdiction to appoint the personal representative.

34 (e) In the case of a beneficiary renouncing an interest in a testamentary trust, a copy of
35 the instrument of renunciation must:

36 (1) Be delivered to the trustee then serving;

37 (2) If no trustee is then serving, be delivered to the personal representative of the
38 decedent's estate; or

39 (3) If no personal representative or trustee is then serving, be filed as an estate
40 matter with a court having jurisdiction to enforce the trust.

41 (f) In the case of a beneficiary renouncing an interest in an inter vivos trust, a copy of
42 the instrument of renunciation must:

43 (1) Be delivered to the trustee then serving;

44 (2) Except as provided in subdivision (3) of this subsection, if no trustee is then
45 serving, be filed as an estate matter with a court having jurisdiction to
46 enforce the trust; or

47 (3) If the renunciation is made before the time the instrument creating the trust
48 becomes irrevocable, be delivered to the settlor of the trust or the transferor
49 of the interest.

1 (g) In the case of a beneficiary renouncing an interest created by a beneficiary
2 designation made before the time the designation becomes irrevocable, a copy of the instrument
3 of renunciation must be delivered to the person making the beneficiary designation.

4 (h) In the case of a beneficiary renouncing an interest created by a beneficiary
5 designation made after the time the designation becomes irrevocable, a copy of the instrument
6 of renunciation must be delivered to the person obligated to distribute the interest.

7 (i) In the case of a renunciation by a surviving holder of an interest in property subject
8 to a right of survivorship, a copy of the instrument of renunciation must be delivered to the
9 persons to whom the person renouncing reasonably believes the renounced interest passes, at
10 their last addresses known to the person renouncing, and to the personal representative of the
11 deceased joint holder, if any.

12 (j) In the case of a renunciation by a permissible appointee, or taker in default of
13 exercise, of a power of appointment at anytime after the power was created, a copy of the
14 instrument of renunciation must be delivered:

15 (1) To the holder of the power;

16 (2) To the fiduciary acting under the instrument that created the power or, if no
17 fiduciary is then serving under the instrument that created the power, filed as
18 an estate matter with a court having authority to appoint the fiduciary; and

19 (3) To any holder of legal title to the property subject to the power of
20 appointment other than the fiduciary.

21 (k) In the case of a renunciation by an appointee of an exercised power of appointment,
22 a copy of the instrument of renunciation must be delivered:

23 (1) To the holder of the power or the personal representative of the holder's
24 estate;

25 (2) To the fiduciary under the instrument that created the power or, if no
26 fiduciary is then serving under the instrument that created the power, filed as
27 an estate matter with a court having authority to appoint the fiduciary; and

28 (3) To any holder of legal title to the property subject to the power of
29 appointment other than the fiduciary.

30 (l) In the case of a renunciation of a power of appointment by the holder of the power,
31 a copy of the instrument of renunciation must be delivered:

32 (1) To the fiduciary acting under the instrument that created the power or, if no
33 fiduciary is then serving under the instrument that created the power, filed as
34 an estate matter with a court having authority to appoint the fiduciary; and

35 (2) To any holder of legal title to the property subject to the power of
36 appointment other than the fiduciary.

37 (m) In the case of a renunciation by a fiduciary of a right, privilege, power, or immunity
38 relating to a trust or estate, a copy of the instrument of renunciation must be delivered as
39 provided in subsection (c), (d), (e), or (f) of this section, as if the power renounced were an
40 interest in property.

41 (n) In the case of a renunciation of a power by an agent, including an attorney-in-fact, a
42 copy of the instrument of renunciation must be delivered to the principal or the principal's legal
43 representative other than the agent.

44 (o) In the case of a renunciation by a trustee of a charitable trust, a copy of the
45 instrument of renunciation must be delivered to the North Carolina Attorney General in
46 addition to any other delivery required by this section.

47 (p) In the case of a renunciation by a donee, a copy of the instrument of renunciation
48 must be delivered to the persons to whom the person renouncing reasonably believes the
49 renounced interest passes, at their last addresses known to the person renouncing, and to the
50 donor or the donor's legal representative other than the donee.

1 (q) The failure to deliver a copy of the instrument of renunciation as required in this
2 section does not affect the validity of the renunciation for purposes of G.S. 31B-3 even though
3 the renunciation may not be recognized as a disclaimer for federal estate tax purposes."

4 **SECTION 6.** G.S. 31B-3 reads as rewritten:

5 **"§ 31B-3. Effect of renunciation.**

6 (a) Unless the decedent, donee of a power of appointment, or creator of an interest
7 under an inter vivos instrument has otherwise provided in the instrument creating the interest,
8 the property or interest renounced devolves as follows:

9 (1) If the renunciation is filed within the time period described in G.S. 31B-2(a),
10 the property or interest renounced devolves and any interest that takes effect
11 in possession or enjoyment after the termination of the property or interest
12 renounced takes effect as if the ~~renouncer~~person whose property or interest
13 is being renounced had predeceased the date the transfer of the renounced
14 interest ~~to the renouncer~~ was complete for federal and State inheritance,
15 estate, and gift tax purposes, or, in the case of the renunciation of a fiduciary
16 right, power, privilege, or immunity, the property or interest subject to the
17 power devolves as if the fiduciary right, power, privilege, or immunity never
18 existed. Any such renunciation relates back for all purposes to the date the
19 transfer of the renounced interest ~~to the renouncer~~ was complete for the
20 purpose of those ~~taxes~~taxes, and the spouse of the person whose property or
21 interest is being renounced has no elective share or other marital interest in
22 the renounced property.

23 (2) If the renunciation is not filed within the time period described in
24 G.S. 31B-2(a), the person whose property or interest is being renounced is
25 deemed to have made a transfer of the property or interest and the property
26 or interest devolves and any interest that takes effect in possession or
27 enjoyment after the termination of the property or interest renounced takes
28 effect as if the ~~renouncer~~person whose property or interest is being
29 renounced had died on the date the renunciation is filed, or, in the case of the
30 renunciation of a fiduciary right, power, privilege, or immunity, the property
31 or interest subject to the power devolves as if the fiduciary right, power,
32 privilege, or immunity ceased to exist as of the date the renunciation is filed.

33 (3) Any future interest that takes effect in possession or enjoyment after the
34 termination of the estate or interest renounced takes effect as if the
35 ~~renouncer~~person whose property or interest is being renounced had died on
36 the date determined under subdivision (1) or (2) of this subsection, and upon
37 the filing of the renunciation the persons in being as of the time the
38 ~~renouncer~~person whose property or interest is being renounced is deemed to
39 have died will immediately become entitled to possession or enjoyment of
40 any such future interest.

41 (b) In the event that the property or interest renounced was created by testamentary
42 disposition, the devolution of the property or interest renounced shall be ~~governed by~~
43 ~~G.S. 31-42(a)~~as provided in G.S. 31-42 notwithstanding that in fact the ~~renouncer~~person whose
44 property or interest is being renounced has not actually died before the testator.

45 (c) In the event that the decedent dies intestate, or the ownership or succession to
46 property or to an interest is to be determined as though a decedent had died intestate, and the
47 ~~renouncer~~person whose property or interest is being renounced has living issue who would
48 have been entitled to an interest in the property or interest if the ~~renouncer~~person whose
49 property or interest is being renounced had predeceased the decedent, then the property or
50 interest renounced shall be distributed to such issue, per stirpes. If the ~~renouncer~~person whose
51 property or interest is being renounced does not have such issue, then the property or interest

1 shall be distributed as though the ~~renouncer~~ person whose property or interest is being
2 renounced had predeceased the decedent.

3 (d) In the event that the property or interest renounced was created by a revocable or
4 irrevocable inter vivos trust, the devolution of the property or interest renounced shall be as
5 provided in G.S. 36C-6-605 notwithstanding that in fact the person whose property or interest
6 is being renounced has not actually died before the event that would otherwise cause the
7 property or interest renounced to pass to the person whose property or interest is being
8 renounced.

9 (e) If a trustee files, within the time period described in G.S. 31B-2(a), a renunciation of
10 an interest in property, the interest does not become trust property. If a trustee does not file a
11 renunciation of an interest in property within the time period described in G.S. 31B-2(a), the
12 interest passes to the person or persons who would have taken the interest as of the date of the
13 renunciation if the trust had never existed.

14 (f) Except as provided in the instrument of renunciation, if a renunciation causes
15 property to pass to a trust in which the person whose property or interest is being renounced
16 holds a power of appointment, the person renouncing is deemed to have renounced the power
17 of appointment with respect to assets passing into the trust by reason of the renunciation if the
18 person renouncing is a person who holds a right to renounce the power of appointment.

19 (g) Unless otherwise provided in the instrument of renunciation, the interest in property
20 being renounced by a surviving tenant by the entireties upon the death of the other tenant is
21 deemed to be a one-half interest in the former entirety property, and title to that one-half
22 interest passes as if the deceased tenant survived the tenant renouncing.

23 (h) Unless otherwise provided in the instrument of renunciation, the interest in property
24 being renounced by a surviving joint tenant with right of survivorship is deemed to be the
25 fractional interest of the deceased joint tenant to which the surviving joint tenant would have
26 been entitled by right of survivorship, and title to that fractional interest passes as if the tenant
27 renouncing predeceased the deceased joint tenant.

28 (i) Reserved for future codification purposes.

29 (j) Reserved for future codification purposes.

30 (k) A renunciation is binding upon the person whose property or interest is being
31 renounced and all persons claiming through or under that person."

32 **SECTION 7.** G.S. 31B-4 reads as rewritten:

33 **"§ 31B-4. Waiver and bar.**

34 (a) The right to renounce property or an interest therein is barred by:

- 35 (1) An assignment, conveyance, encumbrance, pledge, or transfer of the
36 property or interest, or a contract therefor by the person authorized to
37 renounce,
- 38 (2) A written waiver of the right to renounce, or
- 39 (3) Repealed by Session Laws 1998-148, s. 4.
- 40 (4) A sale of the property or interest under judicial sale made before the
41 renunciation is effected.

42 (b) ~~The renunciation or the written waiver of~~ An instrument waiving or barring the right
43 to renounce is binding upon the ~~renouncer or~~ person waiving the right to renounce or the person
44 barred from renouncing and all persons claiming through or under ~~him~~ that person.

45 (c) A fiduciary's application for appointment or assumption of duties as fiduciary does
46 not waive or bar the fiduciary's right to renounce a right, power, privilege, or immunity.

47 (d) No person shall be liable for distributing or disposing of property in reliance upon
48 the terms of a renunciation that is invalid for the reason that the right of renunciation has been
49 waived or barred, if the distribution or disposition is otherwise proper, and the person has no
50 actual knowledge or record notice of the facts that constitute a waiver or bar to the right of
51 renunciation.

1 (e) The right to renounce property or an interest in property pursuant to this Chapter is
2 not barred by an acceptance of the property, interest, or benefit thereunder; provided, however,
3 an acceptance of the property, interest, or benefit thereunder may preclude such renunciation
4 from being a qualified renunciation for federal and State inheritance, estate, and gift tax
5 purposes.

6 (f) An instrument waiving or barring the right to renounce an interest in real property is
7 not effective as to persons protected under G.S. 47-18 or G.S. 47-20 until either (i) registered as
8 provided in those sections or (ii) registered pursuant to a judicial sale proceeding as described
9 in subdivision (4) of subsection (a) of this section in which the person renouncing is a party.
10 The instrument of waiver or bar shall be indexed in the grantor's index under (i) the name of the
11 transferor of the property or interest in the property or creator of the power or holder of the
12 power and (ii) the name of the person whose renunciation is waived or barred."

13 **SECTION 8.** Chapter 31B of the General Statutes is amended by adding a new
14 section to read:

15 **"§ 31B-4.1. Tax qualified renunciation.**

16 If, as a result of a renunciation, the renounced property is treated pursuant to the provisions
17 of Title 26 of the United States Code, as now or hereafter amended, or any successor statute
18 thereto, and the regulations promulgated thereunder, as never having been transferred to the
19 person whose property or interest is being renounced, then the renunciation is an effective
20 renunciation, notwithstanding any other provision of this Chapter. This section does not
21 preclude an action for breach of fiduciary duty."

22 **SECTION 9.** G.S. 31B-6 is repealed.

23 **SECTION 10.** G.S. 28A-13-3 reads as rewritten:

24 **"§ 28A-13-3. Powers of a personal representative or fiduciary.**

25 (a) Except as qualified by express limitations imposed in a will of the decedent or a
26 court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint
27 personal representatives, a personal representative has the power to perform in a reasonable and
28 prudent manner every act which a reasonable and prudent person would perform incident to the
29 collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the
30 desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and
31 expeditious manner as provided by law, including the powers specified in the following
32 subdivisions:

33 ...

34 ~~(33) To renounce in accordance with the provisions of Chapter 31B of the~~
35 ~~General Statutes.~~

36 (a1) Except as qualified by express limitations imposed in a will of the decedent, and
37 subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal
38 representatives, a personal representative shall have absolute discretion to make the election as
39 to which items of the decedent's personal and household effects shall be excluded from the
40 carry over basis provision of the federal income tax law and such election shall be conclusive
41 and binding on all concerned.

42 (a2) Subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal
43 representatives, a personal representative has the power to renounce in accordance with the
44 provisions of Chapter 31B of the General Statutes.

45 (b) Any question arising out of the powers conferred by subsections ~~(a) and (a1)~~
46 ~~above~~(a), (a1), and (a2) of this section shall be determined in accordance with the provisions of
47 Article 18 of this Chapter.

48 (c) Prior to the personal representative exercising possession, custody or control over
49 real property of the estate he shall petition the clerk of court to obtain an order authorizing such
50 possession, custody or control. The petition shall include:

51 (1) A description of the real property which is the subject of the petition;

- 1 (2) The names, ages, and addresses, if known, of the devisees and heirs of the
- 2 decedent;
- 3 (3) A statement by the personal representative that he has determined that such
- 4 possession, custody or control is in the best interest of the administration of
- 5 the estate.

6 The devisees and heirs will be made parties to the proceeding by service of summons in the
 7 manner prescribed by law. If the clerk of court determines that it is in the best interest of the
 8 administration of the estate to authorize the personal representative to take possession, custody
 9 or control he shall grant an order authorizing that power. If a special proceeding has been
 10 instituted by the personal representative pursuant to G.S. 28A-15-1(c), the personal
 11 representative may petition for possession, custody, or control of any real property as a part of
 12 that proceeding and is not required to institute a separate special proceeding."

13 **SECTION 11.** G.S. 32A-1 reads as rewritten:

14 **"§ 32A-1. Statutory Short Form of General Power of Attorney.**

15 The use of the following form in the creation of a power of attorney is lawful, and, when
 16 used, it shall be construed in accordance with the provisions of this Chapter.

17 "NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE
 18 BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF
 19 THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY
 20 PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER
 21 OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.

22 State of _____

23 County of _____

24 I _____, appoint _____ to
 25 be my attorney-in-fact, to act in my name in any way which I could act for
 26 myself, with respect to the following matters as each of them is defined in
 27 Chapter 32A of the North Carolina General Statutes. (DIRECTIONS: Initial the
 28 line opposite any one or more of the subdivisions as to which the principal
 29 desires to give the attorney-in-fact authority.)

- 30 (1) Real property transactions..... _____
- 31 (2) Personal property transactions _____
- 32 (3) Bond, share, stock, securities and commodity
- 33 transactions..... _____
- 34 (4) Banking transactions _____
- 35 (5) Safe deposits _____
- 36 (6) Business operating transactions _____
- 37 (7) Insurance transactions _____
- 38 (8) Estate transactions..... _____
- 39 (9) Personal relationships and affairs _____
- 40 (10) Social security and unemployment _____
- 41 (11) Benefits from military service..... _____
- 42 (12) Tax matters..... _____
- 43 (13) Employment of agents _____
- 44 (14) Gifts to charities, and to individuals other
- 45 than the attorney-in-fact _____
- 46 (15) Gifts to the named attorney-in-fact _____
- 47 (16) Renunciation of an interest in or power over
- 48 property to benefit persons other than the
- 49 attorney-in-fact..... _____
- 50 (17) Renunciation of an interest in or power over
- 51 property to benefit persons including the

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attorney-in-fact.....

(If power of substitution and revocation is to be given, add: 'I also give to such person full power to appoint another to act as my attorney-in-fact and full power to revoke such appointment.')

(If period of power of attorney is to be limited, add: 'This power terminates _____, _____')

(If power of attorney is to be a durable power of attorney under the provision of Article 2 of Chapter 32A and is to continue in effect after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall not be affected by my subsequent incapacity or mental incompetence.')

(If power of attorney is to take effect only after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall become effective after I become incapacitated or mentally incompetent.')

(If power of attorney is to be effective to terminate or direct the administration of a custodial trust created under the Uniform Custodial Trust Act, add: 'In the event of my subsequent incapacity or mental incompetence, the attorney-in-fact of this power of attorney shall have the power to terminate or to direct the administration of any custodial trust of which I am the beneficiary.')

(If power of attorney is to be effective to determine whether a beneficiary under the Uniform Custodial Trust Act is incapacitated or ceases to be incapacitated, add: 'The attorney-in-fact of this power of attorney shall have the power to determine whether I am incapacitated or whether my incapacity has ceased for the purposes of any custodial trust of which I am the beneficiary.')

Dated _____, _____ .

(Seal)

Signature

STATE OF _____ COUNTY OF _____

On this _____ day of _____, _____, personally appeared before me, the said named _____ to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires _____.

(Signature of Notary Public)

Notary Public (Official Seal)"

SECTION 12. G.S. 32A-2 is amended by adding two new subdivisions to read:

"(16) Renunciation of an interest in or power over property to benefit persons other than the attorney-in-fact. – To renounce, in accordance with Chapter 31B of the General Statutes, an interest in or power over property, including a power of appointment, to benefit persons other than the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or an individual to whom the attorney-in-fact owes a legal obligation of support.

(17) Renunciation of an interest in or power over property to benefit persons including the attorney-in-fact. – To renounce, in accordance with Chapter 31B of the General Statutes, an interest in or power over property, including a power of appointment, to benefit persons including the attorney-in-fact, or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or

1 an individual to whom the attorney-in-fact owes a legal obligation of
 2 support."

3 **SECTION 13.** The title of Article 2A of Chapter 32A of the General Statutes reads
 4 as rewritten:

5 "Article 2A.

6 Authority of Attorney-In-Fact to Make ~~Gifts~~Gifts and to Renounce."

7 **SECTION 14.** Article 2A of Chapter 32A of the General Statutes is amended by
 8 adding a new section to read:

9 "**§ 32A-14.2. Renunciation under power of attorney.**

10 (a) If any power of attorney authorizes an attorney-in-fact to do, execute, or perform
 11 any act that the principal might or could do or evidences the principal's intent to give the
 12 attorney-in-fact full power to handle the principal's affairs or deal with the principal's property,
 13 but does not expressly authorize the attorney-in-fact to renounce an interest in or power over
 14 property, the attorney-in-fact shall not have the power or authority to renounce on behalf of the
 15 principal pursuant to Chapter 31B of the General Statutes.

16 (b) Notwithstanding an express grant of general authority to renounce, an
 17 attorney-in-fact that is not an ancestor, spouse, or descendant of the principal may not renounce
 18 under a power of attorney to create in the attorney-in-fact or the estate, creditors, or the
 19 creditors of the estate of the attorney-in-fact, or in an individual to whom the attorney-in-fact
 20 owes a legal obligation of support, an interest in or power over the principal's property by
 21 reason of a renunciation unless the power of attorney expressly authorizes a renunciation that
 22 benefits the attorney-in-fact or the estate, creditors, or the creditors of the estate of the
 23 attorney-in-fact, or an individual to whom the attorney-in-fact owes a legal obligation of
 24 support."

25 **SECTION 15.** G.S. 36C-1-105(b) reads as rewritten:

26 "(b) The terms of a trust prevail over any provision of this Chapter except:

- 27 (1) The requirements for creating a ~~trust~~trust.
- 28 (2) The duty of a trustee to act in good faith and in accordance with the terms
 29 and purposes of the trust and the interests of the ~~beneficiaries~~beneficiaries.
- 30 (3) The requirement that a trust and its terms be for the benefit of its
 31 beneficiaries, and that the trust have a purpose that is lawful, not contrary to
 32 public policy, and possible to ~~achieve~~achieve.
- 33 (4) The power of the court to modify or terminate a trust under G.S. 36C-4-410
 34 through ~~G.S. 36C-4-416~~G.S. 36C-4-416.
- 35 (5) The effect of a spendthrift provision and the rights of certain creditors and
 36 assignees to reach a trust as provided in Article 5 of this Chapter;
- 37 (6) The effect of an exculpatory term under
 38 ~~G.S. 36C-10-1008~~G.S. 36C-10-1008.
- 39 (7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a person
 40 other than a trustee or ~~beneficiary~~beneficiary.
- 41 (8) Periods of limitation for commencing a judicial ~~proceeding~~proceeding.
- 42 (9) The power of the court to take any action and exercise any jurisdiction as
 43 may be necessary in the interests of ~~justice~~justice.
- 44 (10) The subject-matter jurisdiction of the court and venue for commencing a
 45 proceeding as provided in G.S. 36C-2-203 and ~~G.S. 36C-2-204~~;
 46 ~~and~~G.S. 36C-2-204.
- 47 (11) The requirement that the exercise of the powers described in
 48 G.S. 36C-6-602.1(a) shall not alter the designation of beneficiaries to receive
 49 property on the settlor's death under that settlor's existing estate plan.
- 50 (12) The power of a trustee to renounce an interest in or power over property
 51 under G.S. 36C-8-816(32)."

1 **SECTION 16.** G.S. 36C-8-816 reads as rewritten:

2 "**§ 36C-8-816. Specific powers of trustee.**

3 Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

4 ...

5 (30) Request an order from the court for the sale of real or personal property
6 under Article 29A of Chapter 1 of the General Statutes, or for the exchange,
7 partition, or other disposition or change in the character of, or for the grant
8 of options or other rights in or to, such ~~property; and~~ property;

9 (31) Distribute the assets of an inoperative trust consistent with the authority
10 granted under ~~G.S. 28A-22-10;~~ G.S. 28A-22-110; and

11 (32) Renounce, in accordance with Chapter 31B of the General Statutes, an
12 interest in or power over property, including property that is or may be
13 burdened with liability for violation of environmental law."

14 **SECTION 17.** G.S. 36C-8-816(13)c. is repealed.

15 **SECTION 18.** The Revisor of Statutes shall cause to be printed along with this act
16 all explanatory comments of the drafters of this act as the Revisor deems appropriate.

17 **SECTION 19.** This act becomes effective October 1, 2009, and applies to
18 renunciations and powers of attorney executed on or after that date.