

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL DRS45336-MNz-8B (02/06)

Short Title: Nonademption of Specific Devises. (Public)

Sponsors: Senators Barringer, Randleman, and Daniel (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE NONADEMPTION OF SPECIFIC DEVISES IN
3 CERTAIN CASES, AS RECOMMENDED BY THE GENERAL STATUTES
4 COMMISSION.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 7 of Chapter 31 of the General Statutes is amended by adding
7 a new section to read:

8 **"§ 31-42.3. Nonademption of specific devises; unpaid proceeds of sale, condemnation, or**
9 **insurance; sale by conservator, guardian, or attorney-in-fact.**

10 (a) In the absence of a finding of a contrary intention in the testator's will, this section
11 controls the construction of a will where the property of a testator would be adeemed but for
12 this section.

13 (b) A specific devisee has a right to specifically devised property in the testator's estate
14 at the testator's death and to any of the following as applicable:

- 15 (1) Any balance of the purchase price, together with any security agreement,
16 owed by a purchaser at the testator's death by reason of sale of the property.
17 (2) Any amount of a condemnation award for the taking of the property unpaid
18 at death.
19 (3) Any proceeds unpaid at death on fire or casualty insurance on or other
20 recovery for injury to the property.
21 (4) Any property owned by the testator at death and acquired as a result of
22 foreclosure, or obtained in lieu of foreclosure, of the security interest for a
23 specifically devised obligation.
24 (5) Any real property or tangible personal property owned by the testator at
25 death that the testator acquired as a replacement for specifically devised real
26 property or tangible personal property to the extent it is established by clear,
27 cogent, and convincing evidence that the property was acquired by the
28 testator as a replacement for the specifically devised property.
29 (6) If not covered by subdivisions (1) through (5) of this subsection, a pecuniary
30 devise equal to the value as of its date of disposition of other specifically
31 devised property disposed of during the testator's lifetime but only to the
32 extent it is established by clear, cogent, and convincing evidence that
33 ademption would be inconsistent with the testator's manifested plan of
34 distribution or that at the time the will was made, the date of disposition or
35 otherwise, the testator did not intend ademption of the devise.



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1 (c) If specifically devised property is sold or mortgaged by a conservator or guardian or
2 by an attorney-in-fact acting within the authority of a durable power of attorney for an
3 incapacitated or mentally incompetent principal, or a condemnation award, insurance proceeds,
4 or recovery for injury to the property is paid to a conservator or guardian or to an
5 attorney-in-fact acting within the authority of a durable power of attorney for an incapacitated
6 or mentally incompetent principal, the specific devisee has the right to a general pecuniary
7 devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the
8 insurance proceeds, or the recovery.

9 (d) The right of a specific devisee under subsection (c) of this section is reduced by any
10 right the devisee has under subsection (b) of this section.

11 (e) For the purposes of the references in subsection (c) of this section to a conservator
12 or guardian, subsection (c) of this section does not apply if after the sale, mortgage,
13 condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity or mental
14 incompetence ceased and the testator survived the adjudication for at least one year.

15 (f) For the purposes of the references in subsection (c) of this section to an
16 attorney-in-fact acting within the authority of a durable power of attorney for an incapacitated
17 or mentally incompetent principal, all of the following apply:

18 (1) Adjudication of incapacity or mental incompetence before death is not
19 necessary.

20 (2) The acts of an attorney-in-fact within the authority of a durable power of
21 attorney are presumed to be for an incapacitated or mentally incompetent
22 principal."

23 **SECTION 2.** The Revisor of Statutes shall cause to be printed, as annotations to
24 the published General Statutes, all relevant portions of the Official Comment to Section 2-606
25 of the Uniform Probate Code and all explanatory comments of the drafters of this act, as the
26 Revisor may deem appropriate.

27 **SECTION 3.** This act becomes effective January 1, 2018, and applies to estates of
28 decedents dying on or after that date.