

March 24, 2009

**H 765. REVISE ELECTIVE SHARE STATUTES.** Filed 03/24/09. *TO REVISE THE EXISTING ELECTIVE SHARE STATUTES.*

Makes substantial organizational and several substantive changes to GS Chapter 30, the provisions that grant to a surviving spouse the right to claim an elective share of the deceased spouse's estate in addition to property that passes to the surviving spouse by will, trust, intestacy, or operation of law.

Amends GS 30-3.1, the statute that defines the elective share, to eliminate a reference to the impact of federal estate taxes on the elective share calculation. The existing reference to federal estate taxes is included in the new definition of *claims* added to GS 30-3.2.

Makes numerous changes to GS 30-3.2, the definitional section. Adds new definition of *claims* as a term that includes liabilities of the deceased spouse except for (i) claims for equitable distribution under GS 50-20, (ii) federal estate taxes not attributable to property passing to the surviving spouse, and (iii) claims founded on promises of the decedent when such claims are not supported by full or adequate consideration or are otherwise not at arm's length. Defines *general power of appointment* to mean any power of appointment exercisable by the deceased spouse, except powers (i) limited by an "ascertainable standard" as defined in GS 36C-1-103 and (ii) powers shared by the decedent with a person who created the power or who has as substantial adverse interest in the property subject to the power. Defines *non-spousal assets* as all property included in total net assets other than property included in net property passing to surviving spouse. Defines *presently exercisable general power of appointment* as a general power of appointment which is exercisable at the time in question, but not including a testamentary general power of appointment. Adds definition of *property passing to surviving spouse* that incorporates the existing definition of the term in GS 30-3.3 with the following modifications: (i) to include transfers from the deceased spouse during his or her lifetime to the surviving spouse for which the surviving spouse signs a statement acknowledging the transfer as a gift (existing definition also covered transfers for which no statement was signed but for which a gift tax return is filed) and (ii) to include property held as a spousal trust as described in the new GS 30-3.3(e). Defines *responsible person* as a person or entity that received, held or controlled non-spousal assets on the valuation date. Defines *responsible person's non-spousal assets* as the assets received, held, or controlled by a responsible person. Revises the definition of *total assets* to include (i) property passing by intestate succession, other than wrongful death proceeds; (ii) certain property over which the decedent held a presently exercisable general power of appointment; (iii) property held as tenants by the entirety or jointly with rights of survivorship; (iv) benefits payable by reason of the decedent's death, including life insurance and retirement plans; (v) certain life estate property interests held by the decedent; (vi) certain property transferred by the decedent to the extent the decedent maintained a power over the property or the income derived therefrom; and, (vii) certain property transferred by the decedent to someone other than the surviving spouse within one year prior to the decedent's death and during the marriage to the surviving spouse. Defines *total net assets* as the total assets reduced by funeral and estate expenses, allowances to people other than the surviving spouse, and claims, as defined above.

Deletes the existing GS 30-3.3 and replaces it with the procedures for the valuation of property currently codified at GS 30-3.4(e). Modifies those valuation procedures with regard to certain joint property, certain powers of appointment, certain transfers with retained interests, and partial and contingent interest property. Modifies the method for determining value by mandating that the clerk hold a hearing to determine the value of property that is not established by agreement. Existing law mandates that the clerk appoint a disinterested person to make such valuations.

Amends GS 30-3.4, procedure for determining the elective share, to clarify when and how an agent of the surviving spouse may file a claim for an elective share. Deletes the procedures for valuating assets, which is moved to GS 30-3.3. Adds a mediation provision and the opportunity to appeal an elective share proceeding pursuant to GS 1-301.3. Adds opportunity for an interested party to request that the clerk conduct an examination regarding the estate assets as per GS 28A-15-12. Authorizes the clerk to apportion estate expenses among the interested parties.

Renames GS 30-3.5 from "Recovery of assets by personal representative" to "Satisfaction of elective share." Reorganizes provisions governing the process by which the liability to the

surviving spouse is apportioned and satisfied among and by individuals to whom estate assets were or were to be distributed. Provides additional remedies against persons who refuse or are unable to satisfy their obligations to the surviving spouse. Mandates that people who violate a standstill order issued by the clerk regarding estate assets may be held in civil contempt under GS Chapter 2, Article 5A. Requires the clerk to terminate a standstill order when the order is no longer necessary or desirable.

Amends GS 30-3.6 to clarify when an agent of the surviving spouse may waive the surviving spouse's right to an elective share.

Effective when it becomes law and applies to decedents dying on or after October 1, 2009.

**Intro. by Stam.**

GS 30

April 8, 2009

**H 765. REVISE ELECTIVE SHARES STATUTES.** Filed 3/24/09. House committee substitute makes the following changes to 1st edition. Includes funeral and administrative expenses in the proposed definition for *claims* in GS 30-3.2. Deletes in the definition for *net property passing to surviving spouse* that the Property Passing to Surviving Spouse is reduced by the decedent's funeral and administrative expenses, but clarifies that there is a reduction for death taxes *attributable to Property Passing to the Surviving Spouse*. Also deletes in the definition for *total net assets* that the term includes total assets reduced by the decedent's funeral and administrative expenses. Makes clarifying and technical changes to the proposed definitions for *nonspousal assets*, *Property Passing to Surviving Spouse*, and *total assets*.

Deletes all provisions of proposed amended GS 30-3.3 and, instead, inserts proposed provisions in new GS 30-3.3A. Clarifies that no discounts, *including, but not limited to, discounts for lack of control, ownership of a fractional interest, or lack of marketability*, will be taken to reflect the decedent's partial interest in valuing the partial interest in jointly owned property with rights of survivorship. Makes technical changes.

Amends proposed amended GS 30-3.5 to clarify that a decedent's personal representative may elect to satisfy liability by the conveyance of *that portion* of the responsible person's nonspousal assets (or identical substitute assets), valued on the date of the conveyance (was, regardless of the value of such non-spousal assets on the date of conveyance if conveying all assets), sufficient to satisfy the responsible person's liability; or, if the value on the date of conveyance is less than the liability, conveyance of all of the responsible person's nonspousal assets (or identical substitute assets). Makes organizational changes.

Also makes technical changes to proposed amended GS 30-3.4 and GS 30-3.5.

June 30, 2009

**H 765. REVISE ELECTIVE SHARE STATUTES.** Filed 3/24/09. Senate committee substitute makes the following changes to 2nd edition. Rewrites provisions of GS 30-3.5 regarding apportioning the liability to the surviving spouse for the amount of the elective share among responsible persons and recovering assets from responsible persons as follows. Provides that the net value of each nonspousal asset must be determined by calculating its value under GS 30-3.3A and reducing that value by that portion of the claims (including year's allowances to persons other than the surviving spouse) payable out of, charged against, or otherwise properly allocable to that asset. Requires the personal representative to determine each responsible person's liability to the surviving spouse by multiplying the amount of the elective share by a fraction, the numerator of which is the net value of the responsible person's nonspousal assets and denominator of which is the net value of all the nonspousal assets. Specifies the order in which a personal representative who is a responsible person must satisfy his or her liability to the surviving spouse and the methods by which the personal representative, in his or her capacity as a responsible person, and other responsible persons may satisfy their liability to the surviving spouse. Further provides in GS 30-3.2 that the personal representative is the responsible person for nonspousal assets that pass under the decedent's will or by intestate succession. Redefines "net property passing to surviving spouse" as property passing to the surviving spouse reduced by death taxes attributable to property passing to the surviving spouse and claims payable out of, charged against, or otherwise properly allocated to property passing to the surviving spouse.

Deletes provision stating that the value of nonspousal assets is their net values used in determining "total net assets." Deletes the requirement in GS 30-3.4(h) that expenses be paid to the personal representative in cash. Makes additional technical changes.

July 27, 2009

**SL 2009-368 (H 765). REVISE ELECTIVE SHARE STATUTES.** *AN ACT TO REVISE THE EXISTING ELECTIVE SHARE STATUTES.* Summarized in *Daily Bulletin* 3/24/09, 4/8/09, and 6/30/09. Enacted July 27, 2009. Effective July 27, 2009, and applies to decedents dying on or after October 1, 2009.