

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

FILED SENATE
Apr 2, 2019
S.B. 532
PRINCIPAL CLERK

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SENATE BILL DRS15084-MNz-4A

Short Title: Amends Probate/Trusts/Wills Choice of Law.

(Public)

Sponsors: Senator Edwards (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT (I) TO REQUIRE THAT, IN A LIVING PROBATE PROCEEDING, THE ORIGINAL WILL BE INTRODUCED AS EVIDENCE RATHER THAN BEING ATTACHED TO THE INITIAL PETITION, (II) TO PERMIT THE USE OF "MINOR" OR "18+" OR "ADULT" IN PLACE OF THE ACTUAL AGE OF AN HEIR OR DEVISEE IN AN APPLICATION FOR LETTERS OF ADMINISTRATION OR LETTERS TESTAMENTARY, (III) TO ADJUST THIS STATE'S STATUTES DEALING WITH OUT-OF-STATE WILLS RECOGNIZED IN THIS STATE ON THE BASIS OF COMPLIANCE WITH THE LAW OF THE STATE OF EXECUTION IN ORDER TO CONTINUE THE REQUIREMENT THAT THE TESTATOR HAVE BEEN PHYSICALLY PRESENT IN THAT STATE AT THE TIME OF THE WILL'S EXECUTION, (IV) TO PROVIDE FOR NOTICE THAT TENANCY BY THE ENTIRETIES PROPERTY TRANSFERRED TO A TENANCY BY THE ENTIRETIES TRUST REMAINS IMMUNE TO THE CLAIMS OF ONE SPOUSE'S INDIVIDUAL CREDITORS AND TO SPECIFY THAT A PERSON ENTERING INTO A TRANSACTION INVOLVING THE PROPERTY MAY OBTAIN CONFIRMATION FROM THE TRUSTEE THAT THE PROPERTY CONTINUES TO QUALIFY FOR THIS IMMUNITY, AND (V) TO MAKE TECHNICAL CORRECTIONS TO THE AFFECTED STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 28A-2B-1 reads as rewritten:

"§ 28A-2B-1. Establishment before death that a will or codicil is valid.

(a) Any petitioner who is a resident of North Carolina and who has executed a will or codicil may file a petition seeking a judicial declaration that the will or codicil is valid.

(b) The petition shall be filed with the clerk of superior court and the matter shall proceed as a contested estate proceeding governed by Article 2 of Chapter 28A of the General Statutes. At the hearing before the clerk of superior court, the petitioner shall produce the original will or codicil and any other evidence necessary to establish that the will or codicil would be admitted to probate if the petitioner were deceased.

If an interested party contests the validity of the will or codicil, that person shall file a written challenge to the will or codicil before the hearing or make an objection to the validity of the will or codicil at the hearing. Upon the filing of a challenge or the raising of an issue contesting the validity of the will or codicil, the clerk shall transfer the cause to the superior court. The matter shall be heard as if it were a caveat proceeding, and the court shall make a determination as to the validity of the will or codicil and enter judgment accordingly.



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1 If no interested party contests the validity of the will or codicil and if the clerk of superior
2 court determines that the will or codicil would be admitted to probate if the petitioner were
3 deceased, the clerk of superior court shall enter an order adjudging the will or codicil to be valid.

4"

5 **SECTION 1.(b)** G.S. 28A-2B-3 reads as rewritten:

6 "**§ 28A-2B-3. Contents of petition for will validity.**

7 ...

8 (b) The petitioner shall file ~~the original~~ a copy of the will or codicil with the ~~petition~~
9 petition and tender the original will or codicil at the hearing as provided in G.S. 28A-2B-1(b). If
10 an order is entered declaring the will or codicil to be valid, the court shall affix a certificate of
11 validity to the will or codicil."

12 **SECTION 2.** G.S. 28A-6-1(a) reads as rewritten:

13 "(a) The application for letters of administration or letters testamentary shall be in the form
14 of an affidavit sworn to before an officer authorized to administer oaths, signed by the applicant
15 or the applicant's attorney, which may be supported by other proof under oath in writing, all of
16 which shall be recorded and filed by the clerk of superior court, and shall allege all the following
17 facts:

- 18 (1) The name, and to the extent known, the domicile and the date and place of
19 death of the ~~decedent;~~ decedent.
- 20 (2) The legal residence and mailing address of the ~~applicant;~~ applicant.
- 21 (3) The names, ~~ages~~ ages, and mailing addresses of the decedent's heirs and
22 devisees, including the names and mailing addresses of the guardians of those
23 having court-appointed guardians, so far as all of these facts are known or can
24 with reasonable diligence be ~~ascertained;~~ ascertained. It is sufficient to allege
25 "minor" for the age of an heir or devisee under the age of eighteen and "18+"
26 or "adult" for the age of an heir or devisee who is eighteen years of age or
27 older.
- 28 (4) That the applicant is the person entitled to apply for letters, or that the
29 applicant applies after persons having prior right to apply are shown to have
30 renounced under Article 5 of this Chapter, or that the applicant applies subject
31 to the provisions of G.S. 28A-6-2(1), and that the applicant is not disqualified
32 under G.S. 28A-4-2.
- 33 (5) The nature and probable value of the decedent's property, both real and
34 personal, and the location of such property, so far as all of these facts are
35 known or can with reasonable diligence be ~~ascertained;~~ and ascertained.
- 36 (6) If the decedent was not domiciled in this State at the time of the decedent's
37 death, a schedule of the decedent's property located in this State, and the name
38 and mailing address of the decedent's domiciliary personal representative, or
39 if there is none, whether a proceeding to appoint one is pending."

40 **SECTION 3.(a)** G.S. 31-11.6 reads as rewritten:

41 "**§ 31-11.6. How attested wills may be made self-proved.**

42 ...

43 (d) Any will ~~executed in another state~~ recognized as valid under G.S. 31-46(1) or (2) and
44 shown by the propounder to have been made self-proved under the laws of that state the
45 jurisdiction in which the testator was physically present at the time of execution or the place
46 where the testator was domiciled at the time of execution or at the time of death shall be
47 considered as self-proved.

48"

49 **SECTION 3.(b)** G.S. 31-46 reads as rewritten:

50 "**§ 31-46. Validity of will; which laws govern.**

1 A will is valid if it meets the requirements of the applicable provisions of law in effect in this
2 State either at the time of its execution or at the time of the death of the testator, or if ~~(i) its~~ any
3 of the following apply:

4 (1) ~~The will's execution complies with the law of the place where it is~~
5 ~~executed~~ jurisdiction in which the testator was physically present at the time
6 of execution; ~~(ii) its execution.~~

7 (2) ~~Its execution complies with the law of the place where the testator~~
8 ~~is was~~ domiciled at the time of execution or at the time of death; ~~or (iii) it~~
9 death.

10 (3) It is a military testamentary instrument executed in accordance with the
11 provisions of 10 U.S.C. § 1044d or any successor or replacement statute."

12 **SECTION 4.(a)** G.S. 39-13.7(a) reads as rewritten:

13 "(a) Any real property held by a husband and wife as a tenancy by the entireties and
14 conveyed ~~to (i) to a joint trust or (ii) in equal shares to two separate trusts;~~ trusts shall no
15 longer be held by the husband and wife as tenants by the entirety and shall be disposed of by the
16 terms of the trust or trusts, but, subject to the provisions of subsection (b) of this section, the real
17 property shall have the same immunity from the claims of the separate creditors of the husband
18 and wife as would exist if the spouses had continued to hold the property as tenants by the
19 entireties."

20 **SECTION 4.(b)** G.S. 39-13.7 is amended by adding two new subsections to read:

21 "(f) Notice that the real property held in trust receives immunity from the claims of
22 separate creditors may be given in a statement in the conveyance of the tenancy by the entireties
23 real property to the trust that the real property is held under this section and that, as of the date
24 of the conveyance, the requirements of subsection (b) of this section are met.

25 (g) A person entering into a transaction involving real property held in trust under this
26 section may request confirmation from the trustee whether the requirements of this section
27 providing immunity from the claims of separate creditors are met at the time of the transaction."

28 **SECTION 5.** This act is effective when it becomes law.