

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

S

D

SENATE BILL 394
PROPOSED HOUSE COMMITTEE SUBSTITUTE S394-PCS35301-TU-28

Short Title: Changes to Estates & Trusts Statutes.

(Public)

Sponsors:

Referred to:

March 28, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE GENERAL STATUTES CONCERNING
3 ESTATES, TRUSTS, AND GUARDIANSHIPS, AS RECOMMENDED BY THE NORTH
4 CAROLINA BAR ASSOCIATION.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 28A-15-4 reads as rewritten:

7 "§ 28A-15-4. Encumbered assets.

8 When any assets of the estate are encumbered by mortgage, pledge, lien or other security
9 interest, the personal representative may pay the ~~encumbrance~~ underlying debt secured by the
10 encumbrance or any part thereof, of the underlying debt, renew or extend any obligation secured
11 by the encumbrance, or convey or transfer the encumbered assets to the creditor in satisfaction
12 of the ~~creditor's lien, underlying debt~~, in whole or in part, whether or not the holder of the
13 encumbrance has filed a claim, if it appears to be for the best interest of the estate; provided that
14 payment of an ~~encumbrance~~ underlying debt shall not increase the share of the distributee entitled
15 to the encumbered assets unless the distributee is entitled to exoneration by express provisions
16 of the will."

17 SECTION 2. G.S. 35A-1103 reads as rewritten:

18 "§ 35A-1103. Jurisdiction; venue.

19 (a) The clerk in each county shall have original jurisdiction over proceedings under this
20 ~~Subchapter.~~ Subchapter, subject to the rules set forth in Article 2 of Chapter 35B of the General
21 Statutes.

22 (b) Venue for proceedings under this Subchapter shall be in the county in which the
23 respondent resides or is domiciled or is an inpatient in a treatment facility. If the county of
24 residence or domicile cannot be determined, venue shall be in the county where the respondent
25 is present.

26 (c) If proceedings involving the same respondent are brought under this Subchapter in
27 more than one county in which venue is proper, venue shall be in the county in which proceedings
28 were commenced first.

29 (d) If the clerk in the county in which a proceeding under this Subchapter is brought has
30 an interest, direct or indirect, in the proceeding, jurisdiction with respect thereto shall be vested
31 in any superior court judge residing or presiding in the district, and the jurisdiction of the superior
32 court judge shall extend to all things which the clerk might have done."

33 SECTION 3. G.S. 30-15 reads as rewritten:

34 "§ 30-15. When spouse entitled to allowance.

35 Every surviving spouse of an intestate or of a testator, whether or not the surviving spouse
36 has petitioned for an elective share, shall, unless the surviving spouse has forfeited the surviving



* S 3 9 4 - P C S 3 5 3 0 1 - T U - 2 8 *

1 spouse's right thereto, as provided by law, be entitled, out of the personal property of the deceased
2 spouse, to an allowance of the value of sixty thousand dollars (\$60,000) for the surviving spouse's
3 support for one year after the death of the deceased spouse. The surviving spouse may claim the
4 allowance if, at the death of the decedent, either the decedent or the surviving spouse was a
5 resident of this State. Such allowance shall be exempt from any lien, by judgment or execution,
6 acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged
7 against the share of the surviving spouse."

8 **SECTION 4.** Article 5A of Chapter 1 is amended by adding a new section to read:

9 **"§ 1-56.1. No limitation for certain actions.**

10 Notwithstanding G.S. 1-56, an action to reform, terminate, or modify a trust, pursuant to
11 G.S. 36C-4-410 through G.S. 36C-4-416, may be commenced at any time."

12 **SECTION 5.** G.S. 36C-2-203 reads as rewritten:

13 **"§ 36C-2-203. Subject matter jurisdiction.**

14 ...

15 (f) Without otherwise limiting the jurisdiction of the superior court division of the
16 General Court of Justice, proceedings concerning the internal affairs of trusts shall not include,
17 and, therefore, the clerk of superior court shall not have jurisdiction under subsection (a) of this
18 section of any of the following:

- 19 (1) Actions to reform, terminate, or modify a trust as provided by G.S. 36C-4-410
20 through G.S. 36C-4-416. Actions to reform or modify a trust pursuant to
21 G.S. 36C-4-412 through G.S. 36C-4-416 shall include the addition of trust
22 terms to provide for the removal and replacement of the trustee by one or more
23 beneficiaries or other persons.

24"

25 **SECTION 6.** G.S. 36C-4-411 reads as rewritten:

26 **"§ 36C-4-411. Modification or termination of noncharitable irrevocable trust by consent.**

27 (a) If the settlor and all beneficiaries of a noncharitable irrevocable trust consent, they
28 may compel the modification or termination of the trust without the approval of the court even if
29 the modification or termination is inconsistent with a material purpose of the trust. If any
30 beneficiary (i) is a minor or incompetent or a person who is unborn or whose identity or location
31 is unknown and (ii) is unable to be represented under Article 3 of this Chapter, the settlor or any
32 competent adult beneficiary or the representative of any beneficiary properly represented under
33 Article 3 of this Chapter may institute a proceeding before the court to appoint a guardian ad
34 litem. The court shall allow the modification or termination if the court finds that, following the
35 appointment of a guardian ad litem, all beneficiaries or their representatives have consented. A
36 settlor's power to consent to a trust's modification or termination may be exercised by:

- 37 (1) An agent under a power of attorney only to the extent expressly authorized by
38 the power of attorney or the terms of the trust.
39 (2) The settlor's general guardian or the guardian of the estate with the approval
40 of the court supervising the guardianship.

41 (b) A noncharitable irrevocable trust may be terminated upon consent of all of the
42 beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any
43 material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of
44 all of the beneficiaries, if the court concludes that modification is consistent with a material
45 purpose of the trust.

46 (c) Where the beneficiaries of an a noncharitable irrevocable trust seek to compel a
47 termination of the trust and the continuance of the trust is necessary to carry out a material
48 purpose of the trust, or where the beneficiaries seek to compel a modification of the trust in a
49 manner that is inconsistent with its material purpose, the trust may be modified or terminated, in
50 the discretion of the court, only if the court determines that the reason for modifying or

1 terminating the trust under the circumstances substantially outweighs the interest in
2 accomplishing a material purpose of the trust.

3 ...

4 (h) Except for the modification of a trust pursuant to subsection (a) of this section,
5 nothing in this section shall be deemed to permit the modification of a trust to provide for the
6 removal and replacement of a trustee of the trust, including the addition of trust terms providing
7 for the removal and replacement of the trustee by one or more beneficiaries or other persons."

8 **SECTION 7.** Sections 1, 2, and 3 of this act are effective when this act becomes law
9 and apply to decedents dying, estates filed, and pleadings filed on or after that date. Section 4 of
10 this act is intended to clarify existing law and applies to (i) all trusts created before, on, or after
11 the effective date of this act, (ii) all judicial proceedings concerning trusts commenced on or after
12 the effective date of this act, and (iii) all judicial proceedings concerning trusts commenced
13 before the effective date of this act, unless the court finds that application of Section 4 of this act
14 would substantially interfere with the effective conduct of the judicial proceeding or prejudice
15 the rights of the parties. Sections 5 and 6 of this act are effective when this act becomes law and
16 apply to trusts created before, on, or after that date and to pleadings filed on or after that date.
17 The remainder of this act is effective when it becomes law.