

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 736
Committee Substitute Favorable 7/10/19
Committee Substitute #2 Favorable 7/23/19
PROPOSED SENATE COMMITTEE SUBSTITUTE H736-PCS10855-BB-35

Short Title: Elective Share-Joint Accounts.

(Public)

Sponsors:

Referred to:

April 15, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO LIMIT SPOUSAL SHARE WITH RESPECT TO JOINTLY HELD PROPERTY
3 TO A REBUTTABLE PRESUMPTION OF IN-KIND CONTRIBUTION UNLESS
4 OTHERWISE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE AND TO
5 REQUIRE A FEE FOR FILING A CLAIM FOR AN ELECTIVE SHARE.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 30-3.2 reads as rewritten:

8 "§ 30-3.2. Definitions.

9 The following definitions apply in this Article:

10 ...

11 (3f) Total assets. – The sum of the values, as determined pursuant to G.S. 30-3.3A,
12 of the following:

- 13 a. The decedent's property that would pass by intestate succession if the
14 decedent died without a will, other than wrongful death proceeds;
- 15 b. Property over which the decedent, immediately before death, held a
16 presently exercisable general power of appointment, except for (i)
17 property held jointly with right of survivorship, which is includable in
18 total assets only to the extent provided in sub-subdivision c. of this
19 subdivision and (ii) life insurance, which is includable in Total Assets
20 only to the extent provided in sub-subdivision d. of this subdivision.
21 Includes, without limitation:
- 22 1. Property held in a trust that the decedent could revoke.
 - 23 2. Property held in a trust to the extent that the decedent had an
24 unrestricted power to withdraw the property.
 - 25 3. Property held in a depository account owned by the decedent
26 in a financial institution payable or transferable at decedent's
27 death to a beneficiary designated by the decedent.
 - 28 4. Securities owned by the decedent in an account or in
29 certificated form that are payable or transferable at decedent's
30 death to a beneficiary designated by the decedent.
- 31 c. Property held as tenants by the entirety or jointly with right of
32 survivorship as follows:
- 33 1. One-half of any property held by the decedent and the
34 surviving spouse as tenants by the ~~entirety or as joint tenants~~



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- 1 with right of survivorship is included, without regard to who
 2 contributed the property.~~entirety.~~
 3 2. Property held by the decedent and one or more other persons
 4 ~~other than the surviving spouse~~ as joint tenants with right of
 5 survivorship is included to the following extent:
 6 I. ~~All property attributable to the decedent's contribution.~~
 7 H. The extent of the decedent's pro rata share of property
 8 ~~not~~ attributable to the decedent's ~~contribution~~, except to
 9 the extent of property attributable to ~~contributions by a~~
 10 ~~surviving joint tenant.~~contribution.
 11 The decedent ~~is and~~ all other joint tenants are presumed to have
 12 contributed in-kind in accordance with their respective shares
 13 for the jointly owned property unless contribution by another
 14 is otherwise proven by clear and convincing evidence.
 15 d. Benefits payable by reason of the decedent's death under any policy,
 16 plan, contract, or other arrangement, either owned by the decedent or
 17 over which the decedent had a general power of appointment or had
 18 the power to designate the surviving spouse as beneficiary, including,
 19 without limitation:
 20 1. Insurance on the life of the decedent.
 21 2. Accidental death benefits.
 22 3. Annuities.
 23 4. Employee benefits or similar arrangements.
 24 5. Individual retirement accounts.
 25 6. Pension or profit sharing plans.
 26 7. Deferred compensation.
 27 8. Any private or governmental retirement plan.
 28 e. Property irrevocably transferred by the decedent to the extent the
 29 decedent retained the possession or enjoyment of, or the right to
 30 income from, the property for life or for any period not ascertainable
 31 without reference to the decedent's death or for any period that does
 32 not in fact end before the decedent's death, except:
 33 1. Property transferred for full and adequate consideration.
 34 2. Transfers to that the surviving spouse consented in writing by
 35 signing a deed, an income or gift tax return that reports the gift,
 36 or other writing.
 37 3. Transfers that became irrevocable before the decedent's
 38 marriage to the surviving spouse.
 39 The property included in total assets is that fraction of the transferred
 40 property to which the decedent retained the right.
 41 f. Property transferred by the decedent to the extent the decedent created
 42 a power over the property or the income from the property, which,
 43 immediately prior to death, could be exercised by the decedent in
 44 conjunction with any other person, or which could be exercised by a
 45 person who does not have a substantial interest that would be adversely
 46 affected by the exercise or nonexercise of the power, for the benefit of
 47 the decedent, the decedent's estate, the decedent's creditors, or the
 48 creditors of the decedent's estate, except:
 49 1. Property transferred for full and adequate consideration.

1 (7) For the filing of a petition for an elective share proceeding, the clerk shall
2 assess for support of the General Court of Justice, the sum of two hundred
3 dollars (\$200.00).

4 "

5 **SECTION 4.** Section 1 of this act is effective when it becomes law and applies to
6 estates of decedents dying on or after that date and applies to estate proceedings to determine the
7 elective share which are not final on that date because the proceeding is subject to further judicial
8 review. Section 2 and Section 3 of this act become effective December 1, 2020, and apply to
9 estates of decedents dying on or after that date. The remainder of this act is effective when it
10 becomes law.