

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

FILED SENATE
Feb 15, 2023
S.B. 110
PRINCIPAL CLERK

S

D

SENATE BILL DRS15038-MUZ-4

Short Title: GSC Unif. Community Prop. Disp. at Death Act. (Public)

Sponsors: Senators Galey and Sawrey (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE UNIFORM COMMUNITY PROPERTY DISPOSITION AT
3 DEATH ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 31C of the General Statutes is repealed.

6 SECTION 2. Chapter 30 of the General Statutes is amended by adding a new Article
7 to read:

8 "Article 5.

9 "Uniform Community Property Disposition at Death Act.

10 "§ 30-41. Title.

11 This Article may be cited as the Uniform Community Property Disposition at Death Act.

12 "§ 30-42. Definitions.

13 In this Article, the following definitions apply:

14 (1) Community-property spouse. – An individual in a marriage or other
15 relationship that satisfies all of the following:

16 a. Community property could be acquired under the relationship.

17 b. The relationship remains in existence at the time of death of either
18 party to the relationship.

19 (2) Electronic. – Relating to technology having electrical, digital, magnetic,
20 wireless, optical, electromagnetic, or similar capabilities.

21 (3) Jurisdiction. – The United States, a state, a foreign country, or a political
22 subdivision of a foreign country.

23 (4) Partition. – Voluntarily divide property to which this Article otherwise would
24 apply.

25 (5) Person. – Defined in G.S. 28A-1-1.

26 (6) Personal representative. – Defined in G.S. 28A-1-1.

27 (7) Property. – Defined in G.S. 32C-1-102.

28 (8) Reclassify. – To change the characterization or treatment of community
29 property to property owned separately by community-property spouses.

30 (9) Record. – Information inscribed on a tangible medium or stored in an
31 electronic or other medium and retrievable in perceivable form.

32 (10) Sign. – With present intent to authenticate or adopt a record, to do either of
33 the following:

34 a. Execute or adopt a tangible symbol.

35 b. Attach to or logically associate with the record an electronic symbol,
36 sound, or process.



* D R S 1 5 0 3 8 - M U Z - 4 *

1 (11) State. – Consists of the following:

- 2 a. A state of the United States, the District of Columbia, Puerto Rico, the
3 United States Virgin Islands, or any other territory or insular
4 possession subject to the jurisdiction of the United States.
5 b. An Indian tribe or band or Alaskan native village that is recognized by
6 federal law or formally acknowledged by an entity listed in
7 sub-subdivision a. of this subdivision.

8 **"§ 30-43. Included and excluded property.**

9 (a) Subject to subsection (b) of this section, this Article applies to all of the following
10 property of a community-property spouse, without regard to how the property is titled or held:

11 (1) If a decedent was domiciled in this State at the time of death, all of the
12 following property:

- 13 a. All or a proportionate part of each item of personal property, wherever
14 located, that was community property under the law of the jurisdiction
15 where the decedent or the surviving community-property spouse was
16 domiciled either when the community property was acquired or, after
17 acquisition, became community property.
18 b. Income, rent, profit, appreciation, or other increase derived from or
19 traceable to property described in sub-subdivision a. of this
20 subdivision.
21 c. Personal property traceable to property described in sub-subdivision a.
22 or b. of this subdivision.

23 (2) Regardless of whether a decedent was domiciled in this State at the time of
24 death, all of the following property:

- 25 a. All or a proportionate part of each item of real property located in this
26 State traceable to community property or acquired with community
27 property under the law of the jurisdiction where the decedent or the
28 surviving community-property spouse was domiciled either when the
29 community property was acquired or, after acquisition, became
30 community property.
31 b. Income, rent, profit, appreciation, or other increase, derived from or
32 traceable to property described in sub-subdivision a. of this
33 subdivision.

34 (b) If community-property spouses acquired community property by complying with the
35 law of a jurisdiction that allows for creation of community property by transfer of property to a
36 trust, this Article applies to the property only to the extent the property is held in the trust or
37 characterized as community property by the terms of the trust or the law of the jurisdiction under
38 which the trust was created.

39 (c) This Article does not apply to the following property:

- 40 (1) Property that community-property spouses have partitioned or reclassified.
41 (2) Property that is the subject of a waiver of rights granted by this Article.

42 **"§ 30-44. Form of partition, reclassification, or waiver.**

43 (a) Community-property spouses domiciled in this State may partition or reclassify
44 property to which this Article otherwise would apply. The partition or reclassification must be in
45 a record signed by both community-property spouses. Unless both community-property spouses
46 agree otherwise, partition of community property is presumed to result in each spouse owning a
47 one-half separate property interest in each item of property addressed in the record.

48 (b) A community-property spouse domiciled in this State may waive a right granted by
49 this Article only by complying with the law of this State, including this State's choice-of-law
50 rules, applicable to waiver of a spousal property right.

51 **"§ 30-45. Community property presumption.**

1 This Article is presumed to apply to all property acquired by a community-property spouse
2 when domiciled in a jurisdiction where property acquired by the community-property spouse was
3 presumed to be community property under the law of that jurisdiction. This presumption may be
4 rebutted by a preponderance of the evidence.

5 **"§ 30-46. Disposition of property at death.**

6 (a) One-half of the property to which this Article applies belongs to the surviving
7 community-property spouse of a decedent and is not subject to disposition by the decedent at
8 death.

9 (b) One-half of the property to which this Article applies belongs to the decedent and is
10 subject to disposition by the decedent at death.

11 (c) The property that belongs to the decedent under subsection (b) of this section is not
12 subject to the surviving community-property spouse's right to petition for an elective share under
13 Article 1A of this Chapter or the surviving community-property spouse's right to elect a life estate
14 under Article 8 of Chapter 29 of the General Statutes.

15 (d) This section does not apply to property transferred by right of survivorship or under
16 a revocable trust or other nonprobate transfer.

17 (e) This section does not limit the right of a surviving community-property spouse to the
18 year's allowance under Article 4 of this Chapter or the property exemptions under Article X of
19 the North Carolina Constitution and Article 16 of Chapter 1C of the General Statutes.

20 (f) If at death a decedent purports to transfer to a third person property that, under this
21 section, belongs to the surviving community-property spouse and transfers other property to the
22 surviving community-property spouse, this section does not limit the authority of the court under
23 other law of this State to require that the community-property spouse elect between retaining the
24 property transferred to the community-property spouse or asserting rights under this Article.

25 **"§ 30-47. Other remedies available at death.**

26 (a) At the death of a community-property spouse, the surviving community-property
27 spouse or a personal representative, heir, or nonprobate transferee of the decedent may assert a
28 right based on either of the following acts:

29 (1) An act of the surviving community-property spouse or decedent during the
30 marriage or other relationship under which community property then could be
31 acquired.

32 (2) An act of the decedent that takes effect at the death of the decedent.

33 (b) In determining a right under subsection (a) of this section and corresponding remedy,
34 the court shall apply equitable principles and may consider the community property law of the
35 jurisdiction where the decedent or surviving community-property spouse was domiciled when
36 the property was acquired or enhanced.

37 **"§ 30-48. Right of surviving community-property spouse.**

38 (a) The surviving community-property spouse of a decedent may assert a claim for relief
39 with respect to a right under this Article in accordance with the following:

40 (1) With respect to a claim for relief asserting a right in or to property, the
41 surviving community-property spouse must do either of the following:

42 a. Within one year of the decedent's date of death, commence a civil
43 action in superior court against an heir, devisee, or nonprobate
44 transferee that is in possession of the property.

45 b. Within six months after the issuance of letters testamentary or letters
46 of administration in connection with the decedent's testate or intestate
47 proceeding, file a petition with the clerk of superior court or
48 commence a civil action in superior court in the county in which the
49 primary administration of the decedent's estate lies. A petition with the
50 clerk of superior court shall be filed as an estate proceeding, and the

1 proceeding shall be conducted in accordance with the procedures of
2 Article 2 of Chapter 28A of the General Statutes.

3 (2) With respect to a claim for relief other than a claim under subdivision (a)(1)
4 of this section, the surviving community-property spouse must do either of the
5 following:

6 a. If a personal representative of the decedent's estate is not appointed,
7 commence a civil action in superior court within one year of the
8 decedent's date of death.

9 b. Satisfy the procedural requirements of sub-subdivision (a)(1)b. of this
10 section.

11 (3) The incapacity of the surviving spouse does not toll the time for commencing
12 an action or filing a petition as provided in this section.

13 (b) Unless a timely demand is made under sub-subdivision (a)(1)b. or (a)(2)b. of this
14 section, the personal representative may distribute the assets of the decedent's estate without
15 personal liability for a community-property spouse's claim under this Article.

16 **"§ 30-49. Right of heir, devisee, or nonprobate transferee.**

17 An heir, devisee, or nonprobate transferee of a deceased community-property spouse may
18 assert a claim for relief with respect to a right under this Article in accordance with the following:

19 (1) With respect to a claim asserting a right in or to property, the heir, devisee, or
20 nonprobate transferee must do either of the following:

21 a. Within one year of the decedent's date of death, commence a civil
22 action in superior court against the surviving community-property
23 spouse who is in possession of the property.

24 b. Satisfy the procedural requirements of G.S. 30-48(a)(1)b.

25 (2) With respect to a claim for relief other than a claim under subdivision (1) of
26 this section, the heir, devisee, or nonprobate transferee must do either of the
27 following:

28 a. If a personal representative of the decedent's estate is not appointed,
29 commence a civil action in superior court within one year of the
30 decedent's date of death.

31 b. Satisfy the procedural requirements of G.S. 30-48(a)(1)b.

32 (3) The incapacity of the heir, devisee, or nonprobate transferee does not toll the
33 time for commencing an action or filing a petition as provided in this section.

34 **"§ 30-50. Protection of third person.**

35 (a) With respect to property to which this Article applies, a person is not liable under this
36 Article if all of the following apply:

37 (1) The person transacts in good faith and for value with either of the following:

38 a. A community-property spouse.

39 b. After the death of the decedent, a surviving community-property
40 spouse, personal representative, heir, devisee, or nonprobate transferee
41 of the decedent.

42 (2) The person does not know or have reason to know that the other party to the
43 transaction is exceeding or improperly exercising the party's authority.

44 (b) Good faith under subdivision (a)(1) of this section does not require the person to
45 inquire into the extent or propriety of the exercise of authority by the other party to the
46 transaction.

47 (c) With respect to real property to which this Article applies, a lien creditor or a
48 purchaser for value of the property is not liable under this Article unless, before the lien was
49 acquired or the purchase was made, the community-property spouses gave notice in a registered
50 instrument of their intention for this Article to apply to the property. Priority among this
51 registered instrument and other registered instruments is governed by G.S. 47-18.

1 **"§ 30-51. Principles of law and equity.**

2 The principles of law and equity supplement this Article except to the extent inconsistent
3 with this Article.

4 **"§ 30-52. Uniformity of application and construction.**

5 In applying and construing this Article, a court shall consider the promotion of uniformity of
6 the law among jurisdictions that enact the Uniform Community Property Disposition at Death
7 Act."

8 **SECTION 3.** G.S. 28A-2-4 reads as rewritten:

9 **"§ 28A-2-4. Subject matter jurisdiction of the clerk of superior court in estate proceedings.**

10 (a) The clerks of superior court of this State, as ex officio judges of probate, ~~shall~~ have
11 original jurisdiction of estate proceedings. Except as provided in subdivision (4) of this
12 subsection, the jurisdiction of the clerk of superior court is exclusive. Estate proceedings include,
13 but are not limited to, the following:

14 ...

15 (4) Proceedings to ascertain heirs or devisees, to approve settlement agreements
16 pursuant to G.S. 28A-2-10, to determine questions of construction of wills, to
17 determine priority among creditors, to determine whether a person is in
18 possession of property belonging to an estate, to order the recovery of property
19 of the estate in possession of third parties, to determine a claim for relief
20 regarding the disposition of community property at death as provided in
21 Article 5 of Chapter 30 of the General Statutes, and to determine the existence
22 or nonexistence of any immunity, power, privilege, duty, or right. Any party
23 or the clerk of superior court may file a notice of transfer of a proceeding
24 pursuant to this subdivision to the Superior Court Division of the General
25 Court of Justice as provided in G.S. 28A-2-6(h). In the absence of a transfer
26 to superior court, Article 26 of Chapter 1 of the General Statutes ~~shall apply~~
27 applies to an estate proceeding pending before the clerk of superior court to
28 the extent consistent with this Article.

29 (b) Nothing in this section ~~shall affect~~ affects the right of a person to file an action in the
30 Superior Court Division of the General Court of Justice for declaratory relief under Article 26 of
31 Chapter 1 of the General Statutes. In the event that either the petitioner or the respondent in an
32 estate proceeding requests declaratory relief under Article 26 of Chapter 1 of the General
33 Statutes, either party may move for a transfer of the proceeding to the Superior Court Division
34 of the General Court of Justice as provided in Article 21 of Chapter 7A of the General Statutes.
35 In the absence of a removal to superior court, Article 26 of Chapter 1 of the General Statutes
36 ~~shall apply~~ applies to an estate proceeding to the extent consistent with this Article.

37 (c) Without otherwise limiting the jurisdiction of the Superior Court Division of the
38 General Court of Justice, the clerk of superior court ~~shall does not~~ have jurisdiction under
39 subsection (a) or (b) of this section or G.S. 28A-2-5 of the following:

40 ...

41 (4) ~~Proceeding~~ Proceedings to determine proper county of venue as provided in
42 G.S. 28A-3-2.

43"

44 **SECTION 4.** If a provision of this act or its application to a person or circumstance
45 is held invalid, the invalidity does not affect another provision or application that can be given
46 effect without the invalid provision.

47 **SECTION 5.** The Revisor of Statutes shall cause to be printed, as annotations to the
48 published General Statutes, all relevant portions of the Official Comments to the Uniform
49 Community Property Disposition at Death Act and all explanatory comments of the drafters of
50 this act as the Revisor may deem appropriate.

1 **SECTION 6.** If a right with respect to property to which this act applies is acquired,
2 extinguished, or barred on the expiration of a limitation period that began to run under another
3 statute before the effective date of this act, that statute continues to apply to the right even if the
4 statute has been repealed or superseded by this act.

5 **SECTION 7.** This act becomes effective January 1, 2024. Except as provided in
6 Section 6 of this act, this act applies to a judicial proceeding commenced on or after that date,
7 regardless of the date of death of the decedent.