GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 684
SENATE BILL 902

AN ACT TO AMEND CHAPTER 31B OF THE GENERAL STATUTES REGARDING RENUNCIATION OF PROPERTY AND RENUNCIATION OF FIDUCIARY POWERS.

The General Assembly of North Carolina enacts:

Section 1. The title of Chapter 31B of the General Statutes reads as rewritten:

"Chapter 31B.

"Renunciation of ~~Transfers by Will, Intestacy, Appointment or Insurance Contract Act.~~ Property and Renunciation of Fiduciary Powers Act."

Sec. 2. G.S. 31B-1(a) reads as rewritten:

"(a) A person who succeeds to a property interest as:

(1) Heir, or

(2) Next of kin, or

(3) Devisee, or

(4) Legatee, or

(5) Beneficiary of a life insurance policy who did not possess the incidents of ownership under the policy at the time of death of the insured, or

(6) Person succeeding to a renounced interest, or

(7) Beneficiary under a testamentary trust or under an **inter vivos** ~~trust which takes under a will,~~ trust, or

(8) Appointee under a power of appointment exercised by a testamentary ~~instrument,~~ instrument or a nontestamentary instrument, or

~~(9) The duly authorized or appointed guardian with the prior or subsequent approval by the clerk of superior court, or by the resident judge of the superior court of any of the above, or~~

(9a) Surviving joint tenant, surviving tenant by the entireties, or surviving tenant of a tenancy with a right of survivorship, or

(9b) Person entitled to share in a testator's estate under the provisions of G.S. 31-5.5, or

(9c) Beneficiary under any other testamentary or nontestamentary instrument, including a beneficiary under:

a. Any qualified or nonqualified deferred compensation, employee benefit, retirement or death benefit, plan, fund, annuity, contract, policy, program or instrument, either funded or unfunded, which is established or maintained to provide

retirement income or death benefits or results in, or is intended to result in, deferral of income;

b. An individual retirement account or individual retirement annuity; or

c. Any annuity, payable on death, account, or other right to death benefits arising under contract; or

(9d) The duly authorized or appointed guardian with the prior or subsequent approval of the clerk of superior court, or of the resident judge of the superior court, of any of the above.

(10) The personal representative appointed under Chapter 28A of any of the above,

or the attorney-in-fact of any of the above may renounce in whole or in part the right of succession to any property or interest therein, including a future interest, by filing a written instrument under the provisions of this Chapter. A renunciation may be of a fractional share or any limited interest or estate. Provided, however, there shall be no right of partial renunciation if the decedent or donee of the power expressly so provided in the instrument creating the interest."

Sec. 3. Chapter 31B of the General Statutes is amended by adding a new section to read:

"**§ 31B-1A. Right to renounce fiduciary powers.**

(a) Except as otherwise provided in the testamentary or nontestamentary instrument, a fiduciary under a testamentary or nontestamentary instrument may renounce, in whole or in part, fiduciary rights, privileges, powers, and immunities by executing and by delivering, filing, or recording a written renunciation pursuant to the provisions of G.S. 31B-2. A fiduciary may not renounce the rights of beneficiaries unless the instrument creating the fiduciary relationship authorizes such a renunciation.

(b) The instrument of renunciation shall (i) describe any fiduciary right, power, privilege, or immunity renounced, (ii) declare the renunciation and the extent thereof, and (iii) be signed and acknowledged by the fiduciary authorized to renounce."

Sec. 4. G.S. 31B-2 reads as rewritten:

"**§ 31B-2. Time and place of filing renunciation.**

(a) An instrument renouncing a present interest shall be filed within the time period required under the applicable federal statute for a renunciation to be given effect for federal estate tax purposes. If there is no such federal statute the instrument shall be filed not later than ~~seven~~ nine months after the death of the decedent or donee of the power.

(b) An instrument renouncing a future interest shall be filed not later than six months after the event by which the taker of the property or interest is finally ascertained and his interest indefeasibly vested and he is entitled to possession.

(c) The renunciation shall be filed with the clerk of court of the county in which proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be commenced. A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary

of the decedent or donee of the power. If the property interest renounced includes any proceeds of a life insurance policy being renounced pursuant to G.S. 31B-1(a)(5) the person renouncing shall mail, by registered or certified mail, a copy of the renunciation to the insurance company issuing the policy. If the property or property interest renounced is created by nontestamentary instrument, a copy of the renunciation shall be delivered in person, or mailed by registered or certified mail, to the trustee or other person who has legal title to, or possession of, the property or property interest renounced.

(d) If real property or an interest therein is renounced, a copy of the renunciation shall also be filed for recording in the office of the register of deeds of all counties wherein any part of the interest renounced is situated. The renunciation shall be indexed in the grantor's index under (i) the name of the deceased owner or donee of the power, and (ii) the name of the person renouncing. The renunciation of an interest, or a part thereof, in real property shall not be effective to renounce such interest until a copy of the renunciation is filed for recording in the office of the register of deeds in the county wherein such interest or part thereof is situated. A spouse of a person renouncing real property or an interest in real property shall have no statutory dower, inchoate marital rights, or any other interest in the real property or real property interest renounced."

Sec. 5. G.S. 31B-3(a) reads as rewritten:

"(a) Unless the decedent or donee of the power has otherwise provided in the instrument creating the interest, the property or interest renounced devolves as if the renouncer had predeceased the decedent or, if the renouncer is designated to take under a power of appointment exercised by a testamentary instrument, as if the renouncer had predeceased the donee of the ~~power.~~ power, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, as if the fiduciary right, power, privilege, or immunity never existed. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the renouncer had predeceased the decedent or the donee of the power. A renunciation relates back for all purposes to the date of the death of the decedent or the donee of the power."

Sec. 6. G.S. 31B-4 reads as rewritten:

"**§ 31B-4. Waiver and bar.**

(a) The right to renounce property or an interest therein is barred ~~by~~ by:

(1) An assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor by the person authorized to renounce,

(2) A written waiver of the right to renounce,

(3) An acceptance of the property or interest or benefit thereunder, or

(4) A sale of the property or interest under judicial sale made before the renunciation is effected.

(b) The renunciation or the written waiver of the right to renounce is binding upon the renouncer or person waiving and all persons claiming through or under him.

(c) A fiduciary's application for appointment or assumption of duties as fiduciary does not waive or bar the fiduciary's right to renounce a right, power, privilege, or immunity.

(d) No person shall be liable for distributing or disposing of property in reliance upon the terms of a renunciation that is invalid for the reason that the right of renunciation has been waived or barred, if the distribution or disposition is otherwise proper, and the person has no actual knowledge of the facts that constitute a waiver or bar to the right of renunciation."

Sec. 7. G.S. 31B-5 reads as rewritten:

"**§ 31B-5. Exclusiveness of remedy.**

This Chapter does not exclude or abridge ~~the right of a person~~ any other rights or procedures existing under any other statute or otherwise provided by law to waive, release, refuse to accept, disclaim or renounce property or an interest ~~therein under any other statute or as otherwise provided by law.~~ therein, or any fiduciary right, power, privilege, or immunity."

Sec. 8. This act shall become effective October 1, 1989, and shall apply to any renunciation made on or after that date.

In the General Assembly read three times and ratified this the 26th day of July, 1989.