

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

4

HOUSE BILL 908  
Committee Substitute Favorable 4/24/97  
Senate Judiciary Committee Substitute Adopted 7/7/97  
Senate Judiciary Committee Substitute #2 Adopted 8/13/98

Short Title: Modify Rights of Decedent's Spouse.

(Public)

Sponsors:

Referred to:

April 10, 1997

A BILL TO BE ENTITLED  
AN ACT TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE AND TO  
PERMIT NOTICE TO CREDITORS IN SUMMARY ADMINISTRATION OF  
ESTATES.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 30 of the General Statutes is repealed.

Section 2. Chapter 30 of the General Statutes is amended by adding a new

Article to read:

"ARTICLE 1A.

"Elective Share.

**"§ 30-3.1. Right of elective share.**

(a) Elective Share. – The surviving spouse of a decedent who dies domiciled in this State has a right to claim an 'elective share', which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(c), less (ii) the value of Property Passing to Surviving Spouse, as defined in G.S. 30-3.3(a). The applicable share of the Total Net Assets is as follows:

- 1           (1) If the decedent is not survived by any lineal descendants, one-half of the  
2           Total Net Assets.
- 3           (2) If the decedent is survived by one child, or lineal descendants of one  
4           deceased child, one-half of the Total Net Assets.
- 5           (3) If the decedent is survived by two or more children, or by one or more  
6           children and the lineal descendants of one or more deceased children, or  
7           by the lineal descendants of two or more deceased children, one-third of  
8           the Total Net Assets.

9           (b) Reduction of Applicable Share. – In those cases in which the surviving spouse  
10 is a second or successive spouse, and the decedent has one or more lineal descendants  
11 surviving by a prior marriage but there are no lineal descendants surviving by the  
12 surviving spouse, the applicable share as determined in subsection (a) of this section shall  
13 be reduced by one-half.

14           (c) Death Taxes. – Death taxes shall be taken into account as a claim against the  
15 estate in determining Total Net Assets only to the extent that such taxes are increased  
16 because the assets received by the surviving spouse do not qualify for the federal estate  
17 tax marital deduction pursuant to section 2056 of the Code, the North Carolina exemption  
18 from inheritance and estate tax pursuant to G.S. 105-3(10) and (11), or similar provisions  
19 under the laws of any other applicable taxing jurisdiction.

20 **"§ 30-3.2. Definitions.**

21           (a) 'Code' means the Internal Revenue Code in effect at the time of the decedent's  
22 death.

23           (b) 'Death taxes' means any estate, inheritance, succession, and similar taxes  
24 imposed by any taxing authority, reduced by any applicable credits against those taxes.

25           (c) 'Total Net Assets' means, after the payment or provision for payment of the  
26 decedent's funeral expenses, year's allowances to persons other than to the surviving  
27 spouse, debts, claims, and administration expenses, the sum of the following:

- 28           (1) All property to which the decedent had legal and equitable title  
29           immediately prior to death;
- 30           (2) All property received by the decedent's personal representative by  
31           reason of the decedent's death, other than wrongful death proceeds;
- 32           (3) All proceeds of insurance on the life of the decedent of which the  
33           decedent is the owner, or which is payable to the surviving spouse;
- 34           (4) One-half of the value of any property held by the decedent and the  
35           surviving spouse as tenants by the entirety, or as joint tenants with  
36           rights of survivorship;
- 37           (5) The entire value of any property held by the decedent and another  
38           person, other than the surviving spouse, as joint tenants with right of  
39           survivorship, except to the extent that contribution can be proven by  
40           clear and convincing evidence by the surviving tenant;
- 41           (6) The value of any property which would be included in the taxable estate  
42           of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038,  
43           2039, 2040, or 2042 of the Code;

- 1           (7) Any donative transfers of property made during the marriage by the  
2 decedent to donees other than the surviving spouse within three years of  
3 the decedent's death, excluding:  
4           a. Any gifts within the annual exclusion provisions of section 2503  
5 of the Code; and  
6           b. Any gifts to which the surviving spouse consented. A signing of  
7 a deed, or income or gift tax return reporting such gift shall be  
8 considered consent;  
9           (8) Any proceeds of any individual retirement account, pension or profit-  
10 sharing plan, or any private or governmental retirement plan or annuity  
11 of which the decedent controlled the designation of beneficiary,  
12 excluding any benefits under the federal social security system;  
13           (9) Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and  
14           (10) In case of overlapping application of more than one subdivision of this  
15 subsection to same property, the property shall be included only once  
16 under the subdivision yielding the greatest value.

17           (d) 'Nonadverse trustee' means a trustee who would be deemed nonadverse under  
18 section 672 of the Code.

19 **"§ 30-3.3. Property Passing to Surviving Spouse.**

20           (a) Property Passing to Surviving Spouse. – For purposes of this Article,  
21 'Property Passing to Surviving Spouse' means the sum of the following:

- 22           (1) One-half of the value of any property held by the decedent and the  
23 surviving spouse as tenants by the entirety or as joint tenants with rights  
24 of survivorship;  
25           (2) The value of any interest in property (outright or in trust, including any  
26 interest subject to a general power of appointment held by the surviving  
27 spouse, as defined in section 2041 of the Code) devised by the decedent  
28 to the surviving spouse, or which passes to the surviving spouse by  
29 intestacy, or by beneficiary designation, or by exercise of or in default  
30 of the exercise of the decedent's testamentary general or limited power  
31 of appointment, or by operation of law or otherwise by reason of the  
32 decedent's death, excluding any benefits under the federal social  
33 security system;  
34           (3) Any year's allowance awarded to the surviving spouse;  
35           (4) The value of any interest in property, outright or in trust, renounced by  
36 the surviving spouse;  
37           (5) The value of the surviving spouse's interest, outright or in trust, in any  
38 life insurance proceeds on the life of the decedent; and  
39           (6) The value of any interest in property, outright or in trust, transferred  
40 from the decedent to the surviving spouse during the lifetime of the  
41 decedent for which (i) a gift tax return is timely filed reporting such gift,  
42 or (ii) the surviving spouse signs a statement acknowledging such a gift.  
43 For purposes of this subdivision, any gift to the surviving spouse by the

1            decedent of the decedent's interest in any property held by the decedent  
2            and the surviving spouse as tenants by the entirety or as joint tenants  
3            with right of survivorship shall be valued at one-half of the entire value  
4            of that property at the time the gift is made.

5            (b) Special Rule for Spousal Trusts. – Where the interest in Property Passing to  
6 Surviving Spouse is held in trust for the exclusive benefit of the surviving spouse during  
7 the surviving spouse's lifetime, and where the trust authorizes a Nonadverse Trustee to  
8 utilize the principal and income of the trust for the support and maintenance of the  
9 surviving spouse, then the entire value of the trust shall be treated as passing to the  
10 surviving spouse.

11            (c) Death Taxes. – The value of Property Passing to Surviving Spouse shall be  
12 reduced by any death taxes that are a charge against or apportioned against the surviving  
13 spouse on property interests included in Property Passing to Surviving Spouse.

14            (d) No Duplication. – In case of overlapping application of more than one  
15 subdivision of subsection (a) of this section to the same property, the property shall be  
16 included only once under the subdivision yielding the greatest value.

17 **"§ 30-3.4. Procedure for determining the elective share.**

18            (a) Exercisable Only During Lifetime. – The right of the surviving spouse to file a  
19 claim for an elective share must be exercised during the lifetime of the surviving spouse,  
20 by the surviving spouse, the surviving spouse's agent under a power of attorney, or the  
21 guardian of the surviving spouse's estate. If a surviving spouse dies before the claim for  
22 an elective share has been settled, the surviving spouse's personal representative shall  
23 succeed to the surviving spouse's rights to an elective share.

24            (b) Time Limitations. – A claim for an elective share must be made within six  
25 months after the issuance of letters testamentary or letters of administration by (i) filing a  
26 petition with the clerk of superior court of the county in which the primary administration  
27 of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the  
28 personal representative of the decedent's estate. A surviving spouse's incapacity shall not  
29 toll the six-month period of limitations.

30            (c) Time for Hearing. – Unless waived by the personal representative and the  
31 surviving spouse, the clerk shall set the matter for hearing no earlier than two months and  
32 no later than six months after the filing of the petition. However, the clerk may extend the  
33 time of hearing as the clerk sees fit. The clerk shall give notice of the hearing to the  
34 surviving spouse, personal representative, and to any person described in G.S. 30-3.5  
35 who may be required to contribute toward the satisfaction of the elective share.

36            (d) Preparation of Tax Form. – In every case in which a petition to determine an  
37 elective share has been filed, and within two months of the filing of the petition, the  
38 personal representative shall prepare and submit to the clerk a proposed Form 706,  
39 federal estate tax return, for the estate, regardless of whether that form is required to be  
40 filed with the Internal Revenue Service. The clerk may extend the time for submission of  
41 the proposed Form 706 as the clerk sees fit.

42            (e) Valuation. – The valuation of interests in property for purposes of G.S. 30-3.2  
43 and G.S. 30-3.3 shall be determined as follows:

- 1           (1) Basic principles. – Each interest shall be valued at its fair market value,  
2 reduced by all liens, claims, or encumbrances against the interest. For  
3 interests passing at the decedent's death, valuation shall be as of the date  
4 of death, and for interests transferred during the decedent's lifetime,  
5 valuation shall be as of the date of transfer.
- 6           (2) Valuation of partial and contingent interests in property. – The valuation  
7 of interests in property, outright or in trust, which are limited to  
8 commence or terminate upon the death of one or more persons, upon the  
9 expiration of a period of time, or upon the occurrence of one or more  
10 contingencies, shall be determined by computations based upon the  
11 mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and  
12 upon the basis of six percent (6%) of the gross value of the underlying  
13 property in which those interests are limited. However, in valuing  
14 interests passing to the surviving spouse, the following special rules  
15 apply:
- 16           a. Except as provided in G.S. 30-3.3(b), to the extent that the  
17 interest is dependent upon the exercise of discretion by a  
18 fiduciary, the interest shall have no value unless the spouse is  
19 servng as that fiduciary and the power to distribute the trust  
20 property constitutes a general power of appointment held by the  
21 spouse, as defined in section 2041 of the Code;
- 22           b. To the extent that the interest is dependent upon the occurrence  
23 of any contingency that is not subject to the control of the  
24 surviving spouse and that is not subject to valuation by reference  
25 to the mortuary and annuity tables set forth in G.S. 8-46 and G.S.  
26 8-47, the contingency will be conclusively presumed to result in  
27 the lowest possible value passing to the surviving spouse.  
28 However, a life estate or income interest that will terminate only  
29 upon the earlier of the surviving spouse's death or remarriage will  
30 be valued without regard to the possibility of termination upon  
31 remarriage; and
- 32           c. To the extent that the valuation of an interest is dependent upon  
33 the life expectancy of the surviving spouse, that life expectancy  
34 shall be conclusively presumed to be no less than 10 years,  
35 regardless of the actual attained age of the surviving spouse at the  
36 decedent's death.
- 37           (3) Determination of fair market value. – The fair market value of each  
38 asset comprising Total Net Assets shall be determined as follows:
- 39           a. Probate assets and assets passing to spouse. – The value of each  
40 probate asset and Property Passing to Surviving Spouse, other  
41 than assets held in trust, shall be established by the good faith  
42 agreement of the surviving spouse and the personal  
43 representative, unless either (i) the surviving spouse is the

1           personal representative, or (ii) the clerk determines that the  
2           personal representative may not be able to represent the estate  
3           adversely to the surviving spouse.

4           b.    Trust assets. – The value of each trust asset shall be established  
5           by good faith agreement of the surviving spouse and the trustee,  
6           unless either (i) the surviving spouse is the trustee, or (ii) the  
7           clerk determines that the trustee may not be able to represent the  
8           trust adversely to the surviving spouse.

9           c.    Other assets. – The value of any other asset shall be established  
10          by the good faith agreement of the surviving spouse and each  
11          person described in G.S. 30-3.5 who may be required to  
12          contribute toward the satisfaction of the elective share because of  
13          that person's interest in the asset, unless the clerk determines that  
14          valuation under sub-subdivision d. of this subdivision is more  
15          appropriate.

16          d.    Use of disinterested persons. – If the value of any asset is not  
17          established by agreement, the clerk shall appoint one or more  
18          qualified and disinterested persons to determine a value of each  
19          asset. That determination of the value of an asset shall be final  
20          for the purposes of this Article.

21          (f)    Findings and Conclusions. – After notice and hearing, the clerk shall determine  
22          whether or not the surviving spouse is entitled to an elective share, and if so, the clerk  
23          shall then determine the elective share and shall order the personal representative to  
24          transfer that amount to the surviving spouse. The clerk's order shall recite specific  
25          findings of fact and conclusions of law in arriving at the decedent's Total Net Assets,  
26          Property Passing to Surviving Spouse, and the elective share.

27          (g)    Appeals. – Any party in interest may appeal from the decision of the clerk to  
28          the superior court, and in such event the procedure shall be the same as in other special  
29          proceedings as now provided by law. If an appeal is taken from the decision of the clerk,  
30          that appeal shall have the effect of staying the judgment and order of the clerk until the  
31          cause is heard and determined by the superior court upon the appeal taken. Upon an  
32          appeal taken from the clerk to the superior court, the judge may review the findings of  
33          fact by the clerk and may find those facts and consider additional evidence, and the facts  
34          found by the judge shall be final and conclusive upon any appeal to the Appellate  
35          Division.

36          **"§ 30-3.5. Recovery of assets by personal representative.**

37          (a)    Recovery of Assets. – The personal representative is entitled to recover  
38          proportionately from all persons, other than the surviving spouse, receiving or in  
39          possession of any of the decedent's Total Net Assets a sufficient amount to enable the  
40          personal representative to pay the elective share. The apportionment shall be made in the  
41          proportion that the value of the interest of each person receiving or in possession of any  
42          of Total Net Assets bears to Total Net Assets, excluding any Property Passing to  
43          Surviving Spouse. The only persons subject to contribution to make up the elective share

1 are (i) original recipients of property comprising the decedent's Total Net Assets, and  
2 subsequent gratuitous inter vivos donees or persons claiming by testate or intestate  
3 succession to the extent those persons have the property or its proceeds on or after the  
4 date of decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's  
5 control at or after the time a fiduciary receives notice that a surviving spouse has claimed  
6 an elective share. A fiduciary shall not be considered to have notice until it receives  
7 notice at its address as shown in the decedent's estate papers in the clerk's office or, if  
8 there are no such papers or no such address is shown in those papers, at the fiduciary's  
9 residence or the office of its registered agent.

10 The personal representative may withhold from any property of the decedent in his  
11 possession, distributable to any person subject to apportionment, the amount of the  
12 elective share apportioned to such person. If the property in possession of the personal  
13 representative and distributable to any person subject to apportionment is insufficient to  
14 satisfy the proportionate amount of the elective share determined to be due from that  
15 person, the personal representative may recover the deficiency from that person. If the  
16 property is not in possession of the personal representative, the personal representative  
17 may recover from the person the amount of the elective share apportioned to that person  
18 in accordance with this Article. If the personal representative cannot reasonably collect  
19 from any person subject to apportionment the amount of the elective share apportioned to  
20 that person, the amount not reasonably recoverable shall, with the approval of the clerk,  
21 be apportioned among the other persons who are subject to apportionment. The  
22 apportionment shall be made in the proportion that the value of the interest of each  
23 remaining person bears to the total value of the interests of all remaining persons.

24 (b) Standstill Order. – After the filing of the petition demanding an elective share,  
25 either the personal representative or surviving spouse may request the clerk to issue an  
26 order that any recipients not dispose of any of the decedent's Total Net Assets pending  
27 the hearing. The decision to issue such an order shall be in the discretion of the clerk.

28 (c) Satisfaction of Liability. – A person receiving or in possession of any of the  
29 decedent's Total Net Assets may pay his proportionate elective share liability with respect  
30 to that property by any of the following methods:

- 31 (1) Conveyance of the property included in the decedent's Total Net Assets;
- 32 (2) Payment of the value of his liability in cash or, upon agreement of the  
33 surviving spouse, other property; or
- 34 (3) Partial conveyance and partial payment under subdivisions (1) and (2)  
35 of this subsection, provided the value conveyed and paid is equal to his  
36 liability.

37 (d) Expenses. – The expenses reasonably incurred by the personal representative  
38 in connection with the appraisal or recovery of assets shall be apportioned as provided for  
39 the elective share under this Article. If the personal representative finds that it is  
40 inequitable to apportion the expenses because those expenses were incurred because of  
41 the fault of one or more persons subject to apportionment, the personal representative  
42 may direct other more equitable apportionment, with the approval of the clerk.

1 (e) Bond. – If property held by the personal representative is distributed prior to  
2 final apportionment of the elective share, the personal representative may require the  
3 distributee to provide a bond or other security for the apportionment liability in the form  
4 and amount prescribed by the personal representative, with the approval of the clerk.

5 **"§ 30-3.6. Waiver of rights.**

6 (a) The right of a surviving spouse to claim an elective share may be waived,  
7 wholly or partially, before or after marriage, with or without consideration, by antenuptial  
8 agreement or a written waiver signed by the surviving spouse. The agreement or waiver  
9 may also specify which property, if any, is excluded from the operation of this statute;  
10 such specific property shall be excluded from the Total Net Assets of the decedent.

11 (b) A waiver is not enforceable if the surviving spouse proves that:

12 (1) The waiver was not executed voluntarily; or

13 (2) The surviving spouse was not provided a fair and reasonable disclosure  
14 of the property and financial obligations of the decedent, unless the  
15 surviving spouse waived, in writing, the right to that disclosure."

16 Section 3. G.S. 29-30 reads as rewritten:

17 **"§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share**  
18 **provided.**

19 (a) In lieu of the intestate share provided in G.S. 29-14 or ~~29-21~~, G.S. 29-21, or of  
20 the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the  
21 surviving spouse who ~~dissents from the will of a testator~~ has petitioned for an elective share  
22 shall be entitled to take as his or her intestate share or elective share a life estate in one  
23 third in value of all the real estate of which the deceased spouse was seised and possessed  
24 of an estate of inheritance at any time during coverture, except that real estate as to which  
25 the surviving spouse:

26 (1) Has waived his or her rights by joining with the other spouse in a  
27 conveyance thereof, or

28 (2) Has ~~release~~ released or quitclaimed his or her interest therein in  
29 accordance with G.S. 52-10, or

30 (3) Was not required by law to join in conveyance thereof in order to bar  
31 the elective life estate, or

32 (4) Is otherwise not legally entitled to the election provided in this section.

33 (b) Regardless of the value thereof and despite the fact that a life estate therein  
34 might exceed the fractional limitation provided for in subsection (a), the life estate  
35 provided for in subsection (a) shall at the election of the surviving spouse include a life  
36 estate in the usual dwelling house occupied by the surviving spouse at the time of the  
37 death of the deceased spouse if such dwelling house ~~were~~ was owned by the deceased  
38 spouse at the time of his or her death, together with the outbuildings, improvements and  
39 easements thereunto belonging or appertaining, and lands upon which situated and  
40 reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership  
41 in the household furnishings therein.

42 (c) The election provided for in subsection (a) shall be made by the filing of a  
43 notice thereof with the clerk of the superior court of the county in which the



1 administration of the estate is pending, or, if no administration is pending, then with the  
2 clerk of the superior court of any county in which the administration of the estate could  
3 be commenced. Such election shall be made:

- 4 (1) At any time within one month after the expiration of the time fixed for  
5 the filing of a ~~dissent~~, the petition for elective share under Article 1A of  
6 Chapter 30, or
- 7 (2) In case of intestacy, then within 12 months after the death of the  
8 deceased spouse if letters of administration are not issued within that  
9 period, or
- 10 (3) If letters of administration are issued within 12 months after the date of  
11 the death of the deceased spouse, then within one month after the  
12 expiration of the time limited for filing claims against the estate, or
- 13 (4) If litigation that affects the share of the surviving spouse in the estate is  
14 pending, then within such reasonable time as may be allowed by written  
15 order of the clerk of the superior court.

16 The notice of election shall:

- 17 (1) Be directed to the clerk with whom filed;
- 18 (2) State that the surviving spouse making the same elects to take under this  
19 section rather than under the provisions of ~~G.S. 29-14 or 29-21~~, G.S. 29-  
20 14, 29-21, or 30-3.1, as applicable;
- 21 (3) Set forth the names of all heirs, devisees, legatees, personal  
22 representatives and all other persons in possession of or claiming an  
23 estate or an interest in the property described in subsection (a); and
- 24 (4) Request the allotment of the life estate provided for in subsection (a).

25 The notice of election may be in person, or by attorney authorized in a writing  
26 executed and duly acknowledged by the surviving spouse and attested by at least one  
27 witness. If the surviving spouse is a minor or an incompetent, the notice of election may  
28 be executed and filed by a general guardian or by the guardian of the person or estate of  
29 the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the  
30 notice of election may be executed and filed by a next friend appointed by the clerk. The  
31 notice of election, whether in person or by attorney, shall be filed as a record of the court,  
32 and a summons together with a copy of the notice shall be served upon each of the  
33 interested persons named in the notice of election.

34 (d) In case of election to take a life estate in lieu of an intestate ~~share~~, share or  
35 elective share, as provided in either G.S. 29-14, 29-21, or ~~30-3(a)~~, 30-3.3(a), the clerk of  
36 superior court, with whom the notice of election has been filed, shall summon and  
37 appoint a jury of three disinterested persons who being first duly sworn shall promptly  
38 allot and set apart to the surviving spouse the life estate provided for in subsection (a) and  
39 make a final report of such action to the clerk.

40 (e) The final report shall be filed by the jury not more than 60 days after the  
41 summoning and appointment thereof, shall be signed by all jurors, and shall describe by  
42 metes and bounds the real estate in which the surviving spouse shall have been allotted  
43 and set aside a life estate. It shall be filed as a record of court and a certified copy thereof

1 shall be filed and recorded in the office of the register of deeds of each county in which  
2 any part of the real property of the deceased spouse, affected by the allotment, is located.

3 (f) In the election and procedure to have the life estate allotted and set apart  
4 provided for in this section, the rules of procedure relating to ~~partition~~-partitioning  
5 proceedings shall apply except insofar as the same would be inconsistent with the  
6 provisions of this section.

7 (g) Neither the household furnishings in the dwelling house nor the life estates  
8 taken by election under this section shall be subject to the payment of debts due from the  
9 estate of the deceased spouse, except those debts secured by such property as follows:

10 (1) By a mortgage or deed of trust in which the surviving spouse has  
11 waived his or her rights by joining with the other spouse in the making  
12 thereof; or

13 (2) By a purchase money mortgage or deed of trust, or by a conditional  
14 sales contract of personal property in which title is retained by the  
15 vendor, made prior to or during the marriage; or

16 (3) By a mortgage or deed of trust made prior to the marriage; or

17 (4) By a mortgage or deed of trust constituting a lien on the property at the  
18 time of its acquisition by the deceased spouse either before or during the  
19 marriage.

20 (h) If no election is made in the manner and within the time provided for in  
21 subsection (c) the surviving spouse shall be conclusively deemed to have waived his or  
22 her right to elect to take under the provisions of this section, and any interest which the  
23 surviving spouse may have had in the real estate of the deceased spouse by virtue of this  
24 section shall terminate."

25 Section 4. G.S. 30-15 reads as rewritten:

26 "**§ 30-15. When spouse entitled to allowance.**

27 Every surviving spouse of an intestate or of a testator, whether or not he has  
28 petitioned for an elective share, ~~dissented from the will~~, shall, unless he has forfeited his  
29 right thereto, as provided by law, be entitled, out of the personal property of the deceased  
30 spouse, to an allowance of the value of ten thousand dollars (\$10,000) for his support for  
31 one year after the death of the deceased spouse. Such allowance shall be exempt from  
32 any lien, by judgment or execution, acquired against the property of the deceased spouse,  
33 and shall, in cases of testacy, be charged against the share of the surviving spouse."

34 Section 5. G.S. 31-5.3 reads as rewritten:

35 "**§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.**

36 A will is not revoked by a subsequent marriage of the maker; and the surviving  
37 spouse may ~~dissent from such petition for an elective share when there is a will~~ made prior  
38 to the marriage in the same manner, upon the same conditions, and to the same extent, as  
39 a surviving spouse may ~~dissent from~~ petition for an elective share when there is a will  
40 made subsequent to marriage."

41 Section 6. G.S. 31A-1(b) reads as rewritten:

42 "(b) The rights lost as specified in subsection (a) of this section shall be as follows:

43 (1) All rights of intestate succession in the estate of the other spouse;

- 1 (2) All right to claim or succeed to a homestead in the real property of the  
2 other spouse;
- 3 (3) All right to ~~dissent from the will~~ petition for an elective share of the estate  
4 of the other spouse and take either the elective intestate share provided  
5 or the life interest in lieu thereof;
- 6 (4) All right to any year's allowance in the personal property of the other  
7 spouse;
- 8 (5) All right to administer the estate of the other spouse; and
- 9 (6) Any rights or interests in the property of the other spouse which by a  
10 settlement before or after marriage were settled upon the offending  
11 spouse solely in consideration of the marriage."

12 Section 7. G.S. 31C-3 reads as rewritten:

13 **"§ 31C-3. Disposition of community property upon death.**

14 Upon death of a married person, one half of the property to which this Chapter applies  
15 is the property of the surviving spouse and is not subject to testamentary disposition by  
16 the decedent or distribution under the laws of succession of this State. One half of that  
17 property is the property of the decedent and is subject to testamentary disposition or  
18 distribution under the laws of succession of this State. With respect to property to which  
19 this Chapter applies, the one half of the property of the decedent is not subject to the  
20 surviving spouse's right to ~~dissent from the will~~ petition for an elective share under the  
21 provisions of Article ~~4-1A~~ of Chapter 30, and is not subject to the right to elect a life  
22 estate under the provisions of Article 8 of Chapter 29."

23 Section 8. G.S. 84-5(2) reads as rewritten:

- 24 "(2) When any of the following acts are to be performed in connection with  
25 the fiduciary activities of such a corporation, said acts shall be  
26 performed for the corporation by a duly licensed attorney, not a salaried  
27 employee of the corporation, retained to perform legal services required  
28 in connection with the particular estate, trust or other fiduciary matter:
- 29 a. Offering wills for probate.
- 30 b. Preparing and publishing notice of administration to creditors.
- 31 c. Handling formal court proceedings.
- 32 d. Drafting legal papers or giving legal advice to spouses  
33 concerning ~~dissent from their spouses' will.~~ rights to an elective  
34 share under Article 1A of Chapter 30 of the General Statutes.
- 35 e. Resolving questions of domicile and residence of a decedent.
- 36 f. Handling proceedings involving year's allowances of widows and  
37 children.
- 38 g. Drafting deeds, notes, deeds of trust, leases, options and other  
39 contracts.
- 40 h. Drafting instruments releasing deeds of trust.
- 41 i. Drafting assignments of rent.
- 42 j. Drafting any formal legal document to be used in the discharge  
43 of the corporate fiduciary's duty.

- 1 k. In matters involving estate and inheritance taxes, gift taxes, and  
2 federal and State income taxes:
- 3 1. Preparing and filing protests or claims for refund, except  
4 requests for a refund based on mathematical or clerical  
5 errors in tax returns filed by it as a fiduciary.
  - 6 2. Conferring with tax authorities regarding protests or  
7 claims for refund, except those based on mathematical or  
8 clerical errors in tax returns filed by it as a fiduciary.
  - 9 3. Handling petitions to the tax court.
- 10 1. Performing legal services in insolvency proceedings or before a  
11 referee in bankruptcy or in court.
- 12 m. In connection with the administration of an estate or trust:
- 13 1. Making application for letters testamentary or letters or  
14 administration.
  - 15 2. Abstracting or passing upon title to property.
  - 16 3. Handling litigation relating to claims by or against the  
17 estate or trust.
  - 18 4. Handling foreclosure proceedings of deeds of trust or  
19 other security instruments which are in default."

20 Section 9. G.S. 28A-28-6 reads as rewritten:

21 **"§ 28A-28-6. Spouse's assumption of liabilities.**

22 ~~If~~ Except as provided for in G.S. 28A-28-8, if the clerk grants the order for summary  
23 administration, the spouse shall be deemed to have assumed, to the extent of the value of  
24 the property received by the spouse under the will of the decedent or by intestate  
25 succession, all liabilities of the decedent that were not discharged by reason of death and  
26 liability for all taxes and valid claims against the decedent or the estate. The value of the  
27 property is the fair market value of the property on the date of death of the decedent less  
28 any liens or encumbrances on the property so received. The spouse may assert any  
29 defense, counterclaim, cross-claim, or setoff which would have been available to the  
30 decedent if the decedent had not died except for actions listed in G.S. 28A-18-1(b). A  
31 spouse shall not be deemed to have assumed any liabilities of the decedent that were  
32 discharged by reason of death."

33 Section 10. Article 28 of Chapter 28A of the General Statutes is amended by  
34 adding a new section to read:

35 **"§ 28A-28-8. Optional notice to creditors.**

36 The surviving spouse may elect to give notice to creditors in accordance with G.S.  
37 28A-14-1. Upon compliance with the provisions of G.S. 28A-14-1, claims against the  
38 decedent's estate and claims against the surviving spouse under G.S. 28A-28-6 shall be  
39 barred pursuant to G.S. 28A-19-3 unless a claim is presented to the surviving spouse as  
40 set forth in G.S. 28A-19-1, in which event the provisions of Article 19 of Chapter 28A of  
41 the General Statutes shall apply. In order to carry out the provisions of this section, the  
42 surviving spouse shall be deemed to be the personal representative of the decedent for  
43 purposes of G.S. 28A-17-12 and Article 19 of Chapter 28A of the General Statutes."

1           Section 11. This act becomes effective January 1, 1999. Sections 9 and 10  
2 apply to estates of decedents dying on or after January 1, 1997. The remaining sections  
3 apply to estates of decedents dying on or after January 1, 1999.