

Article 3.

Surviving Partners.

§ 59-74. Surviving partner to give bond.

Upon the death of any member of a partnership, the surviving partner shall, within 30 days, execute before the clerk of the superior court of the county where the partnership business was conducted, a bond payable to the State of North Carolina, with sufficient surety conditioned upon the faithful performance of his duties in the settlement of the partnership affairs. The amount of such bond shall be fixed by the clerk of the court; and the settlement of the estate and the liability of the bond shall be the same as under the law governing administrators and their bonds. (1915, c. 227, ss. 1, 2, 3; C.S., s. 3277.)

§ 59-75. Effect of failure to give bond.

Upon the failure of the surviving partner to execute the bond provided for in G.S. 59-74, the clerk of the superior court shall, upon application of any person interested in the estate of the deceased partner, appoint a collector of the partnership, who shall be governed by the same law governing an administrator of a deceased person. (1915, c. 227, s. 4; C.S., s. 3278.)

§ 59-76. Surviving partner and personal representative to make inventory.

When a member of any partnership dies the surviving partner, within 60 days after the death of the deceased partner, together with the personal representative of the deceased partner, shall make out a full and complete inventory of the assets of the partnership, including real estate, if there be any, together with a schedule of the debts and liabilities thereof, a copy of which inventory and schedule shall be retained by the surviving partner, and a copy thereof shall be furnished to the personal representative of the deceased partner. (1901, c. 640; Rev., s. 2540; C.S., s. 3279.)

§ 59-77. When personal representative may take inventory; receiver.

If the surviving partner should neglect or refuse to have such inventory made, the personal representative of the deceased partner may have the same made in accordance with the provisions of G.S. 59-76. Should any surviving partner fail to take such an inventory or refuse to allow the personal representative of the deceased partner's estate to do so, such personal representative of the deceased partner's estate may forthwith apply to a court of competent jurisdiction for the appointment of a receiver for such partnership, who shall thereupon proceed to wind up the same and dispose of the assets thereof in accordance with law. (1901, c. 640, s. 2; Rev., s. 2541; C.S., s. 3280; 2000-140, s. 101(o); 2001-387, s. 116.)

§ 59-78. Notice to creditors.

Every surviving partner, within 30 days after the death of the deceased partner, shall notify all persons having claims against the partnership which were in existence at the time of the death of the deceased partner, to exhibit the same to the surviving partner within six months from the date of first publication of such notice. The notice shall be published once a week for four consecutive weeks in a newspaper qualified to publish legal advertisements, if any such newspaper is published in the county. If there is no newspaper published in the county, but there is a newspaper having general circulation in the county, then at the option of the surviving partner the notice shall be published in the newspaper having general circulation in the county and posted at the courthouse or

the notice shall be posted at the courthouse and four other public places in the county. (1901, c. 640, s. 3; Rev., s. 2542; C.S., s. 3281; 1951, c. 381, s. 2; 1973, c. 1410, ss. 1, 2.)

§ 59-79. Debts paid pro rata; liens.

All debts and demands against a copartnership, where one partner has died, shall be paid pro rata, except debts which are a specific lien on property belonging to the partnership. (1901, c. 640, s. 4; Rev., s. 2543; C.S., s. 3282.)

§ 59-80. Effect of failure to present claim in six months.

In an action brought on a claim which was not presented within six months from the first publication of the general notice to creditors, the surviving partner shall not be chargeable for any assets that he may have paid in satisfaction of any debts before such action was commenced, nor shall any costs be recovered in such action against the surviving partner. (1901, c. 640, s. 5; Rev., s. 2544; C.S., s. 3283; 1973, c. 1410, s. 3.)

§ 59-81. Procedure for purchase by surviving partner.

(a) Appraisal of Property. – The surviving partner may, if he so desire, make application to the clerk of the superior court of the county in which the partnership existed, after first giving notice to the executor or administrator of the time of the hearing of such application, for the appointment of three judicious, disinterested appraisers, one of whom may be named by the surviving partner, one by the representative of the deceased partner's estate, and the third named by the two appraisers selected, whose duty it shall be to make out under oath a full and complete inventory and appraisal of the entire assets of the partnership, including real estate if there be any, together with a schedule of the debts and liabilities thereof, and to deliver the same to the surviving partner; they shall also deliver a copy to the executor or administrator, and file a copy with the clerk of the court.

(b) Surviving Partner May Purchase. – The surviving partner may, with the consent of the executor or administrator of the deceased partner and the approval of the clerk of the superior court by whom such executor or administrator was appointed, purchase the interest of such deceased partner in the partnership assets at the appraised value thereof, including the good will of the business, first deducting therefrom the debts and liabilities of the partnership, for cash or upon giving to the executor or administrator his promissory note or notes, with good approved security, and satisfactory to the executor or administrator, for the payment of the interest of such deceased partner in the partnership assets.

(c) Surviving Partner to Give Bond. – In case the surviving partner shall avail himself of the privilege of purchasing such interest as provided for in this section, he shall give bond to the executor or administrator with surety for the payment of the debts and liabilities of the partnership, and for the performance of all contracts for which the partnership is liable.

(d) Sale of Real Estate. – In case of such sale of the real estate belonging to the partnership, the title to the real estate so purchased shall not pass until the sale thereof has been reported to and confirmed by the clerk of the superior court of the county in which the partnership was located, in a special proceeding to which the widow and heirs at law or devisees of the deceased partner are duly made parties. (1901, c. 640, s. 6; Rev., s. 2545; 1911, c. 12; C.S., s. 3284.)

§ 59-82. Surviving partner to account and settle.

In case the surviving partner shall not avail himself of the privilege of purchasing the interest of the deceased partner, he shall, within six months from the date of the first publication of notice to

creditors, file with the clerk of the superior court of the county where the partnership was located, an account, under oath, stating his action as surviving partner, and shall come to a settlement with the executor or administrator of the deceased partner: Provided, that the clerk of the superior court shall have power, upon good cause shown, to extend the time within which said final settlement shall be made. The surviving partner for his services in settling the partnership estate shall receive commissions to be allowed by the court. (1901, c. 640, s. 7; Rev., s. 2546; C.S., s. 3285; 1947, c. 781; 1957, c. 783, s. 6; 1973, c. 1410, s. 4.)

§ 59-83. Accounting compelled.

In case any surviving partner fails to come to a settlement with the executor or administrator of the deceased partner within the time prescribed by law, the clerk of the superior court may, at the instance of such executor, administrator or other person interested in such deceased partnership estate, cite the surviving partners to a final settlement as provided for by law in the case of executors and administrators. (1901, c. 640, s. 8; Rev., s. 2547; C.S., s. 3286.)

§ 59-84. Settlement otherwise provided for.

When the original articles of partnership in force at the death of any partner or the will of a deceased partner make provision for the settlement of the deceased partner's interest in the partnership, and for a disposition thereof different from that provided for in this Chapter, the interest of such deceased partner in the partnership shall be settled and disposed of in accordance with the provisions of such articles of partnership or of such will. (1901, c. 640, s. 6; Rev., s. 2545; C.S., s. 3287.)