

## Chapter 28C.

### Estates of Missing Persons.

#### § 28C-1. Death not presumed from seven years' absence; exposure to peril to be considered.

(a) Death Not to Be Presumed from Mere Absence. – In any action under this Chapter, where the death of a person and the date thereof, or either, is in issue the fact that he has been absent from his place of residence, unheard of for seven years, or for any other period, creates no presumption requiring the judge or the jury to find that he is now deceased. The issue shall be decided by the judge as one of fact upon the evidence.

(b) Exposure to Specific Peril to Be Considered. – If during such absence the person has been exposed to a specific peril of death, this fact shall be considered by the judge; or if there be a jury, shall be sufficient evidence to be submitted to the jury. (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)

#### § 28C-2. Action for receiver; contents of complaint; parties.

(a) Action for Receiver to Be Instituted in the Superior Court. – If any person having an interest in any property in this State disappears and is absent from his place of residence and after diligent inquiry his whereabouts remains unknown to those persons most likely to know the same, for a period of 30 days or more, anyone who would be entitled to administer the estate of such absentee if he were deceased, or any interested person, may commence a civil action and file a duly verified complaint in the superior court of either the county of such absentee's domicile, or the county where any of his property is situated.

(b) Contents of the Complaint. – The complaint shall contain the following:

- (1) The name, age, occupation, and last known residence or address of such absentee;
- (2) The date and circumstances of his disappearance;
- (3) So far as known, a schedule of all his property within this State, including property in which he has an interest as tenant by the entirety, and other property in which he is co-owner with or without the right of survivorship;
- (4) The names and addresses of the person who would have an interest in the estate of such absentee if he were deceased;
- (5) The names and addresses of all persons known to the complainant to claim an interest in the absentee's property; and
- (6) A prayer, that ancillary to the principal action, a receiver be appointed by virtue of the provisions of this Chapter to take custody and control of such property of the absentee and to preserve and manage the same pending final disposition of the action as provided in G.S. 28C-11.

(c) Parties to the Action. – The absentee, all persons who would have an interest in the estate of such absentee if he were deceased, all persons known to claim an interest in the absentee's property, and all known insurers of the life of the absentee shall be made parties to the action. A guardian ad litem shall be appointed for the absentee, and shall file an answer in his behalf. (1965, c. 815, s. 1; 1973, c. 522, s. 11; c. 1329, s. 2.)

#### § 28C-3. Procedure on complaint.

Upon the filing of the complaint referred to in G.S. 28C-2, the judge may for cause shown appoint a temporary receiver to take charge of the property of the absentee to conserve it pending hearing on the complaint. Such temporary receiver shall qualify by giving bond in an amount and

with surety approved by the judge and shall exercise only the powers specified by the judge. Within 30 days after the date of his appointment, he shall file an inventory of the property taken in charge. If a permanent receiver is appointed, the temporary receiver shall transfer and deliver to the permanent receiver all property in his custody and control, less such only as may be necessary to cover his expenses and compensation as allowed by the judge, and shall file his final account, and upon its approval be discharged. If the prayer for a permanent receiver is denied, the temporary receiver shall transfer and deliver to those entitled thereto all property in his custody and control less such only as may be necessary to cover his expenses and compensation as allowed by the judge, and shall file his final account, and upon its approval be discharged. If the prayer for a permanent receiver is denied the expenses and compensation of the temporary receiver may in the discretion of the judge be taxed as costs of the action to be paid by the complainant, but if the judge finds that the complaint was brought in good faith and upon reasonable grounds, he may charge such costs against the property of the absentee. (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)

#### **§ 28C-4. Notice to interested persons.**

Upon the filing of the inventory by the temporary receiver, the judge shall issue a notice reciting the substance of the complaint and the appointment and action of the temporary receiver. This notice shall be addressed to such absentee, to all persons who would have an interest in the estate of such absentee if he were deceased, to all persons alleged in the complaint to claim an interest in the absentee's property, and to all whom it may concern. It shall direct them to file in the court within a time fixed by the judge a written statement of the nature and extent of the interest claimed in the property, and to appear at a time and place named and show cause why a permanent receiver of the absentee's property should not be appointed to hold and dispose of the property under the provisions of this Chapter. The return day of the notice shall be not less than 30 nor more than 60 days after its date unless otherwise ordered by the judge. (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)

#### **§ 28C-5. Service of notices.**

All notices required under this Chapter shall be served on all parties to the action and on all other persons entitled to such notice in the manner now prescribed by Rules of Civil Procedure, and in addition thereto the absentee shall be served by publication once in each of four successive weeks in one or more newspapers in the county where the proceeding is pending, and one copy shall be posted in a conspicuous place upon each parcel of land shown in the temporary receiver's inventory, and one copy shall be sent by registered or certified mail with return receipt requested to the last known address of such absentee. The judge may in his discretion cause other and further notice to be given within or without the county. (1965, c. 815, s. 1; 1973, c. 1329, s. 2; 1981, c. 682, s. 8.)

#### **§ 28C-6. Procedure after notice.**

The absentee or any person entitled to notice as provided in G.S. 28C-4 may appear and show cause why a permanent receiver of the absentee's property should not be appointed to hold and dispose of the property under the provisions of this Chapter. The judge may, after the hearing, either dismiss the complaint and order that the property in the custody and control of the temporary receiver be returned to the persons entitled thereto or he may make a finding that the absentee disappeared as of a stated date and appoint a permanent receiver of the absentee's property. (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)

**§ 28C-7. Property transferred to permanent receiver by order of judge; filing of inventory; recordation of order of transfer.**

Upon the permanent receiver giving bond as required by G.S. 28C-16 and its approval by the judge, the judge shall order the temporary receiver to transfer and deliver to the permanent receiver custody and control of the absentee's property, and the permanent receiver shall file with the court an inventory of the property received by him. A copy of this order as it affects any real property shall be issued by the judge and delivered to the permanent receiver who shall cause the same to be recorded in the office of the register of deeds of each county wherein such real property is situated. (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)

**§ 28C-8. Powers and duties of permanent receiver.**

The permanent receiver shall under the direction of the judge administer the absentee's property as an equity receivership with the following powers:

- (1) To take custody and control of all property of the absentee wherever situated,
- (2) To collect all debts due to the absentee and to pay all debts owed by him,
- (3) To bring and defend suits,
- (4) To pay insurance premiums,
- (5) With the approval of the judge in each instance, to continue to operate and manage any business enterprise, farm or farming operations, and to make necessary contracts with reference thereto,
- (6) With the approval of the judge in each instance, to renew notes and other obligations, obtain loans on life insurance policies, and pledge or mortgage property for loans necessary in carrying on or liquidating the affairs of such absentee,
- (7) With the approval of the judge in each instance, to partition property owned by the absentee and another as joint tenants or tenants in common, with or without the right of survivorship; provided, in the case of property owned by the absentee and spouse as tenants by the entirety, such property may be partitioned only if the absentee's spouse consents in writing to the partitioning, and, in the event of partitioning, one half of the property or proceeds shall belong to the spouse and one half shall belong to the receiver as property of the absentee,
- (8) With the approval of the judge in each instance to sell, lease, invest and reinvest any or all property, its income, or its proceeds,
- (9) To pay over or apply the proceeds of loans and sales of such portion, or all of the property or the income thereof as may be necessary for the maintenance and support of the absentee's dependents; and if the income from the property of the absentee is not sufficient to pay all his debts and to provide for the maintenance and support of his dependents, the permanent receiver may apply to the judge for an order to sell or mortgage so much of the real or personal property as may be necessary therefor; each such sale or mortgage shall be reported to the judge, and if approved and confirmed by the judge, the receiver shall execute the required conveyances or mortgages of such property to the purchaser or lender upon his complying with the terms of sale or mortgage.

The judge may, in his discretion, by written order modify, add to or subtract from the statutory powers granted in this section. (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)

### **§ 28C-9. Search for absentee.**

The judge shall by order direct the receiver to make a search for the absentee. The order shall specify the manner in which the search is to be conducted in order to insure that, in the light of the circumstances of the particular case, a diligent and reasonable effort be made to locate the absentee. The order may prescribe any methods of search deemed advisable by the judge, but must require, as a minimum, the following:

- (1) Inquiry of persons at the absentee's home, his last known residence, the place where he was last known to have been, and other places where information would likely be obtained or where the absentee would likely have gone;
- (2) Inquiry of relatives, friends and associates of the absentee, or other persons who should be most likely to hear from or of him;
- (3) Insertion of a notice in one or more appropriate papers, periodicals or other news media, requesting information from any person having knowledge of the absentee's whereabouts; and
- (4) Notification of local, state and national offices which should be most likely to know or learn of the absentee's whereabouts. (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)

### **§ 28C-10. Claims against absentee.**

Immediately upon the appointment of a permanent receiver under this Chapter, the permanent receiver shall publish a notice addressed to all persons having claims against the absentee informing them of the action taken and requiring them to file their claims under oath with the permanent receiver. If any claimant fails to file his sworn claim within six months from the date of the first publication of such notice, the receiver may plead this fact in bar of his claim. Such notice shall be published in the same manner as that now prescribed by statute (G.S. 28-47) for claims against the estate of a decedent. Any party in interest may contest the validity of any claim before the judge, on due notice given to the permanent receiver and the person whose claim is contested. (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)

### **§ 28C-11. Final finding and decree.**

(a) At any time, during the receivership proceedings, upon application to the judge by any party in interest and presentation of satisfactory evidence of the absentee's death, the judge may make a final finding and decree that the absentee is dead; in which event the decree and transcript of all of the receivership proceedings shall be certified to the clerk of the superior court for any administration as may be required by law upon the estate of a decedent, and the judge shall proceed no further except for the purposes hereinafter set forth in G.S. 28C-12, subdivisions (1) and (4); or

(b) At any time during the receivership proceedings, upon application to the judge by any party in interest and presentation of satisfactory evidence of the absentee's existence and whereabouts, except as provided in G.S. 28C-20, the judge may be decree revoke his finding that he is an absentee, and the judge shall proceed no further except for the purposes hereinafter set forth in G.S. 28C-12, subdivisions (2) and (4); or

(c) After the lapse of five years from the date of the finding of disappearance provided for in G.S. 28C-6, if the absentee has not appeared and no finding and decree have been made in accordance with the provisions of either subsections (a) or (b) above, and subject to the provisions of G.S. 28C-14, the judge may proceed to take further evidence and thereafter make a final finding of such absence and enter a decree declaring that all interest of the absentee in his property,

including property in which he has an interest as tenant by the entirety and other property in which he is co-owner with or without the right of survivorship, subject to the provisions of G.S. 28C-8(7), has ceased and devolved upon others by reason of his failure to appear and make claim. (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)

#### **§ 28C-12. Termination of receivership.**

Upon the entry of any final finding and decree as provided in G.S. 28C-11, the judge shall proceed to wind up the receivership and terminate the proceedings:

- (1) In the case of a decree under G.S. 28C-11, subsection (a), that the absentee is dead:
  - a. By satisfying all outstanding expenses and costs of the receivership, and
  - b. By then deducting for the insurance fund provided in G.S. 28C-19 a sum equal to five percent (5%) of the total value of the property remaining for distribution upon settlement of the absentee's estate, including amounts paid to the estate from policies of insurance on the absentee's life, and
  - c. By then certifying the proceedings to the clerk of the superior court subject to an order by the judge administering the receivership, or
- (2) In the case of a decree under G.S. 28C-11, subsection (b), revoking the finding that the missing person is an absentee:
  - a. By satisfying all outstanding expenses and costs of the receivership, and
  - b. By then returning his remaining property to him and rendering an accounting for that property not returned; or
- (3) In the case of a decree under G.S. 28C-11, subsection (c), declaring that all interest of the absentee in his property has ceased:
  - a. By satisfying all outstanding expenses and costs of the receivership, and
  - b. By then satisfying all outstanding taxes, other debts and charges, and
  - c. By then deducting for the insurance fund provided in G.S. 28C-19 a sum equal to five percent (5%) of the total value of the property remaining, including amounts paid to the receivership estate from policies of insurance on the absentee's life, and
  - d. By transferring or distributing the remaining property as provided in G.S. 28C-13; and
- (4) In all three cases by requiring the receiver's account, and upon its approval, discharging him and his bondsmen and entering a final decree terminating the receivership. (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)

#### **§ 28C-13. Distribution of property of absentee.**

The property remaining for distribution in accordance with the provisions of G.S. 28C-12, subdivision (3)d shall be transferred or distributed by the receiver and in accordance with the judge's decree to those persons who would be entitled thereto under the applicable laws of intestate succession as though the absentee died intestate on the day five years after the date of his disappearance as determined by the judge in his final finding and decree; or, if the absentee leaves a document which, had he died, might have been admissible to probate as his will, the judge administering the receivership shall cause citations to issue to all persons entitled to notice upon the probate of wills in solemn form and determine whether the will would have been admitted to

probate, and, if it shall be so determined, the transfer and distribution shall be according to the provisions of the document as of the date of the decree under G.S. 28C-12, subdivision (3)d, subject, however, to the right of the spouse of such absentee, or others, to claim whatever property they would have been entitled by law to claim in derogation of the terms of the will as if the absentee had actually died testate on the date five years after the date of his disappearance as determined by the judge in his final finding and decree. (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)

**§ 28C-14. Additional limitations on accounting, distribution or making claim by absentee.**

If, at the time of the hearing in G.S. 28C-6 wherein a permanent receiver is appointed by the judge after a finding of disappearance as of a stated date, the date of disappearance so found is more than four years prior to the date of such hearing, the time limited for accounting for or fixed for transferring or distributing the property or its proceeds, or for barring actions by or on behalf of the absentee relative thereto, shall be not less than two years after the date of the appointment of the permanent receiver instead of the five years provided in G.S. 28C-11(c).

Provided, however, that the time limited for accounting for or fixed for transferring and distributing any additional property or its proceeds within the State coming into the custody and control of the permanent receiver during such two-year period, or for barring actions by or on behalf of the absentee relative thereto, shall be not more than one year after the expiration of said two-year period. (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)

**§ 28C-15. When claim of absentee barred.**

No action shall be brought by an absentee to recover any portion of the property which is the subject of this proceeding after a final finding and decree as provided for in G.S. 28C-11(a) or 28C-11(c). (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)

**§ 28C-16. Laws of administration of estates applicable.**

Except as otherwise provided in this Chapter, the laws of this State applicable to administration of decedents' estates as to the amount and type of bond, inventories, reports, priority of creditors, compensation and court costs shall govern receivers appointed under this Chapter. (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)

**§ 28C-17. Appointment of public administrator as receiver for estate of less than \$1,000.**

Whenever a receiver is to be appointed under this Chapter, and it is found by the judge that the fair value of the estate involved is less than one thousand dollars (\$1,000), the judge shall appoint the public administrator as such receiver, if there be one for the county. In case such public administrator is appointed, he shall act as receiver under his official bond as public administrator which shall be liable for any default, and no other bond shall be required. (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)

**§ 28C-18. Payment of insurance policies.**

(a) At the time of the distribution under G.S. 28C-13 the judge may direct the payment of any sums as they become due on any policies of insurance upon the life of the absentee, to the proper parties as their interest may appear.

(b) If the insurer refuses payment, the judge, upon the finding of appropriate supplemental pleadings in the pending action, shall determine all issues arising upon the pleadings, provided that all issues of fact shall be tried by a jury, unless trial by jury is waived.

(c) Where the required survival of a beneficiary is not established the provisions of this Chapter shall apply as if the proceeds of the insurance were a part of the estate of the absentee, unless the absentee retained no interest in the policy.

(d) If in any proceeding under subsection (b) it is determined that the absentee is not dead and the policy provides for a surrender value, the receiver or an otherwise entitled beneficiary acting through the receiver, may demand the payment of the surrender value or obtain a policy loan. The receiver's receipt for such payment of surrender value shall be a release to the insurer of all claims under the policy. The receiver shall pay over to such beneficiary any money so received, first reserving only an amount allowed by the judge as costs of the proceedings under this section and that amount required by G.S. 28C-12(3)b. (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)

#### **§ 28C-19. Absentee Insurance Fund.**

(a) In each case of termination of the receivership, as provided in G.S. 28C-12, subdivisions (1) and (3), the judge shall set aside the sum therein named for the Absentee Insurance Fund and direct its payment by the receiver to the Treasurer of the State, who shall be liable therefor upon his official bond as for other moneys received by him in his official capacity.

(b) The Treasurer shall retain, invest and reinvest all funds thus paid in a separate account entitled the "Absentee Insurance Fund," and add thereto as received the interest or other earnings.

(c) If at any time thereafter, a person declared an absentee whose estate has been distributed under a final finding and decree made as provided in G.S. 28C-13 shall personally appear before the Treasurer and make claim for reimbursement from such fund, the superior court may in an action commenced in the Superior Court of Wake County by such person against the Treasurer, enter a judgment ordering payment to the claimant of such part of the accumulated fund from all sources as in its opinion is found to be fair, adequate and reasonable under the circumstances, taking into account the disposition made of his property, the reasons for his absence, and any other relevant matters.

(d) An action for compensation from the Absentee Insurance Fund shall be begun within three years from the time of the absentee's return. In cases of infancy or other disability recognized by law, persons under such disability shall have one year after the removal of such disability within which to begin the action.

(e) The Treasurer of the State shall from time to time prescribe the rate to be charged for the "Absentee Insurance Fund" under G.S. 28C-12, subdivisions (1) and (3) on the basis of actuarial experience. (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)

#### **§ 28C-20. Provisions applicable to person held incommunicado in foreign country.**

As to a person who is known to be held incommunicado in a foreign country, G.S. 28C-1 through 28C-8 and G.S. 28C-10 may be applied as though the person were an absentee within the meaning of this Chapter, and if the person's whereabouts becomes unknown, the other provisions of this Chapter may be applied by such amendments to the pending proceeding as may be required. This section shall not apply to personnel serving in or with the Armed Forces of the United States, the United States Merchant Marine, or the Red Cross during a period of hostilities between the United States and some other power who are listed by the appropriate federal agency as prisoners of war or as missing in action. (1965, c. 815, s. 1; 1973, c. 522, s. 12; c. 1329, s. 2; 2011-183, s. 26.)

#### **§ 28C-21. When agents' acts binding on estate of absentee.**

Acts of an agent of an absentee, carried out in good faith, prior to the appointment of a receiver under this Chapter, shall be binding on the estate of such absentee if said acts were within the scope of the agent's real or apparent authority. (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)

**§ 28C-22. Provisions of Chapter severable.**

If any provisions of this Chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable. (1965, c. 815, s. 1; 1973, c. 1329, s. 2.)