

## Chapter 31B.

### Renunciation of Property and Renunciation of Fiduciary Powers Act.

#### § 31B-1. Right to renounce succession.

- (a) A person who succeeds to a property interest as:
- (1) Heir;
  - (2) Next of kin;
  - (3) Devisee;
  - (4) Repealed by Session Laws 2011-284, s. 35, effective June 24, 2011.
  - (4a) Donee;
  - (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;
  - (6) Person succeeding to a renounced interest;
  - (7) Beneficiary under a testamentary trust or under an inter vivos trust;
  - (8) Appointee, permissible appointee, or taker in default under a power of appointment exercised by a testamentary instrument or a nontestamentary instrument;
  - (9) Repealed by Session Laws 1989, c. 684, s. 2.
  - (9a) Surviving joint tenant, surviving tenant by the entireties, or surviving tenant of a tenancy with a right of survivorship;
  - (9b) Person entitled to share in a testator's estate under the provisions of G.S. 31-5.5;
  - (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;
  - (9d) Duly authorized or appointed guardian of any of the persons listed in subdivisions (1) through (9c) of this subsection, but only with the prior or subsequent approval of the clerk of superior court, or if required, of the resident judge of the superior court, pursuant to a proceeding or action instituted in accordance with and subject to the requirements of G.S. 31B-1.2; or
  - (9e) Subject to G.S. 31B-1.1 and G.S. 31B-1.2, fiduciary, including a trustee of a charitable trust, an attorney-in-fact of any of the persons listed in subdivisions (1) through (9e) of this subsection if expressly authorized by the governing power of attorney, and a personal representative appointed under Chapter 28A of the General Statutes of any of the persons listed in subdivisions (1) through (9c) of this subsection;
  - (10) Repealed by Session Laws 2009-48, s. 1, effective October 1, 2009.

may renounce at anytime, 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. The renunciation shall be deemed to include the entire interest of the person whose property or interest

is being renounced unless otherwise specifically limited. A person may renounce any interest in or power over property, including a power of appointment, even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to renounce. Notwithstanding the foregoing, there shall be no right of partial renunciation if the instrument creating the interest expressly so provides.

(b) This Chapter shall apply to all renunciations of present and future interests, whether qualified or nonqualified for federal and State inheritance, estate, and gift tax purposes, unless expressly provided otherwise in the instrument creating the interest.

(c) The instrument of renunciation shall (i) identify the transferor of the property or interest in the property or the creator of the power or the holder of the power, (ii) describe the property or interest renounced, (iii) declare the renunciation and extent thereof, and (iv) be signed and acknowledged by the person renouncing.

(d) A parent of a minor for whom no general guardian or guardian of the estate has been appointed may renounce, in whole or in part, an interest in or power over property (including a power of appointment) that would have passed to the minor as the result of that parent's renunciation. The parent may renounce the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to renounce. (1975, c. 371, s. 1; 1983, c. 66, s. 1; 1989, c. 684, s. 2; 1998-148, s. 1; 2009-48, s. 1; 2011-284, s. 35; 2017-102, s. 11.)

#### **§ 31B-1.1. Right of fiduciary to renounce.**

(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; however, a fiduciary may not renounce the personal rights exercisable by a beneficiary alone, unless the instrument creating the fiduciary relationship authorizes such a renunciation. The instrument of renunciation shall (i) identify the creator of the rights, powers, privileges, or immunities, (ii) describe any right, power, privilege, or immunity renounced, (iii) declare the renunciation and the extent thereof, and (iv) be signed and acknowledged by the fiduciary authorized to renounce.

(b) Except as provided in subsection (c) of this section and except to the extent a statute of this State expressly restricts or limits a fiduciary's right to renounce, a fiduciary acting in a fiduciary capacity may renounce the right of succession to any property or interest therein as permitted by this Chapter, even if the testamentary or nontestamentary instrument governing the fiduciary restricts or limits the right to renounce the fiduciary's right of succession to the property or interest therein.

(c) An attorney-in-fact for a principal acting under subsection (a) or subsection (b) of this section may renounce only if expressly authorized by the governing power of attorney. (1989, c. 684, s. 3; 2009-48, s. 2.)

#### **§ 31B-1.2. Right of fiduciary to institute a proceeding for review of renunciation.**

(a) Prior to renouncing, if a fiduciary so elects, the fiduciary may institute a proceeding by petition before the clerk of court for a determination as to whether a renunciation would be compatible with the fiduciary's duties. In the case of a trustee, commencement of the proceeding, jurisdiction, venue, parties, representation, and notice shall be governed by Chapter 36C of the General Statutes. In the case of a personal representative, commencement of the proceeding, jurisdiction, venue, parties, representation, and notice shall be governed by Chapter 28A of the

General Statutes. In addition to any other notice requirements, notice of the proceeding shall be given to all persons entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

(b) After renouncing, if a fiduciary so elects, the fiduciary has a right to institute a declaratory judgment action pursuant to Article 26 of Chapter 1 of the General Statutes for a determination as to whether the renunciation is compatible with the fiduciary's duties. In addition to any other notice requirements, notice of the action shall be given to all persons entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

(c) A proceeding or action instituted under this section shall comply with all of the following:

(1) The petition or complaint shall state the basis for the fiduciary's allegation that the renunciation is compatible with the fiduciary's duties, considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries. A petition or complaint filed by a trustee of a charitable trust shall contain a statement that a copy of the petition or complaint is being provided to the Attorney General.

(2) After considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries, the court shall enter an order stating the court's determination as to whether the renunciation is compatible with the fiduciary's duties.

(d) The effectiveness of a renunciation is not affected by a determination under this section that the renunciation is not compatible with a fiduciary's duties. (2009-48, s. 3; 2011-344, s. 9.)

**§ 31B-1A:** Recodified as G.S. 31B-1.1.

**§ 31B-2. Filing and registering of renunciations; failure to file or register; spouse's interest.**

(a) To be a qualified disclaimer for federal and State inheritance, estate, and gift tax purposes, an instrument of renunciation shall be filed within the time period required under the applicable federal statute for a renunciation to be given effect as a disclaimer for federal estate and gift tax purposes. If there is no such federal statute the instrument shall be filed not later than nine months after the date the transfer of the renounced interest to the person whose property or interest is being renounced was complete for the purpose of such taxes.

(b) When a renunciation of real property or an interest in real property is made within the time period required under subsection (a) of this section, the spouse of the person whose property or interest is being renounced is not required to join in the execution of the instrument of renunciation, and, as provided in G.S. 31B-3(a)(1), the spouse has no statutory dower, inchoate marital rights, elective share, or any other marital interest in the real property or real property interest renounced.

(c) The renunciation is effective when filed with the clerk of court (i) in the county in which court proceedings have been commenced for the administration of the estate of the deceased owner or deceased creator of the power or holder of the power; or (ii) if proceedings have not been commenced, then in a county in which they could be commenced; or (iii) in all other cases, in a county with a court that has jurisdiction to enforce the terms of the instrument creating the interest renounced. In those cases in which an estate proceeding has not been commenced, the renunciation shall be filed as an estate matter. In addition to the above requirements, a renunciation of real

property, or an interest therein, shall be registered in accordance with the provisions of subsection (d) of this section.

(d) If real property or an interest therein is renounced, the instrument of renunciation shall also be registered as provided in G.S. 47-18 or G.S. 47-20. The instrument of renunciation shall be indexed in the grantor's index under (i) the name of the transferor or creator of the power or holder of the power, and (ii) the name of the person whose property or interest is being renounced. Failure to file or register the instrument of renunciation does not affect the effectiveness of the renunciation as between the person whose property or interest is being renounced and persons to whom the property interest or power passes by reason of the renunciation; however, record title to a renounced interest in real property does not pass to persons receiving the renounced interest by reason of the renunciation until the instrument of renunciation is registered as provided in G.S. 47-18 or G.S. 47-20.

(e) If an instrument transferring an interest in or right, privilege, power, or immunity over property subject to a renunciation is required or permitted by law to be filed or registered, the instrument of renunciation may be so filed or registered. Failure to file or register the instrument of renunciation does not affect the effectiveness of the renunciation as between the person whose property or interest is being renounced and persons to whom the property interest or power passes by reason of the renunciation. (1975, c. 371, s. 1; 1979, c. 525, s. 7; 1983, c. 66, s. 2; 1989, c. 684, s. 4; 1991, c. 744, s. 1; 1998-148, s. 2; 2009-48, s. 4.)

#### **§ 31B-2.1. Delivery to other persons of instrument of renunciation by the person renouncing.**

(a) In this section:

(1) "Beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

- a. An annuity or insurance policy;
- b. An account with a designation for payment on death;
- c. A security registered in beneficiary form;
- d. A pension, profitsharing, retirement, or other employment-related benefit plan;
- e. An individual retirement account or retirement annuity; or
- f. Any other nonprobate transfer at death.

(2) "Deliver" means to deliver in person or to send, properly addressed, by first-class mail, telephonic facsimile transmission equipment, electronic mail, or third-party commercial carrier, or by any method permitted by G.S. 1A-1, Rule 4.

(b) The failure to deliver a copy of an instrument of renunciation by a method permitted by G.S. 1A-1, Rule 4, or by a method that results in actual receipt tolls any statute of limitations with regard to any right of action for breach of fiduciary duty.

(c) If a fiduciary renounces an interest in property pursuant to G.S. 31B-1(a)(9e), a copy of the instrument of renunciation shall be delivered to each living person whose beneficial interest is affected by the renunciation and to any co-fiduciary who did not join in the renunciation.

(d) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust, a copy of the instrument of renunciation must:

- (1) Be delivered to the personal representative of the decedent's estate; or

- (2) If no personal representative is then serving, be filed as an estate matter with a court having jurisdiction to appoint the personal representative.
- (e) In the case of a beneficiary renouncing an interest in a testamentary trust, a copy of the instrument of renunciation must:
  - (1) Be delivered to the trustee then serving;
  - (2) If no trustee is then serving, be delivered to the personal representative of the decedent's estate; or
  - (3) If no personal representative or trustee is then serving, be filed as an estate matter with a court having jurisdiction to enforce the trust.
- (f) In the case of a beneficiary renouncing an interest in an inter vivos trust, a copy of the instrument of renunciation must:
  - (1) Be delivered to the trustee then serving;
  - (2) Except as provided in subdivision (3) of this subsection, if no trustee is then serving, be filed as an estate matter with a court having jurisdiction to enforce the trust; or
  - (3) If the renunciation is made before the time the instrument creating the trust becomes irrevocable, be delivered to the settlor of the trust or the transferor of the interest.
- (g) In the case of a beneficiary renouncing an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a copy of the instrument of renunciation must be delivered to the person making the beneficiary designation.
- (h) In the case of a beneficiary renouncing an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a copy of the instrument of renunciation must be delivered to the person obligated to distribute the interest.
- (i) In the case of a renunciation by a surviving holder of an interest in property subject to a right of survivorship, a copy of the instrument of renunciation must be delivered to the persons to whom the person renouncing reasonably believes the renounced interest passes, at their last addresses known to the person renouncing, and to the personal representative of the deceased joint holder, if any.
- (j) In the case of a renunciation by a permissible appointee, or taker in default of exercise, of a power of appointment at anytime after the power was created, a copy of the instrument of renunciation must be delivered:
  - (1) To the holder of the power;
  - (2) To the fiduciary acting under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and
  - (3) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.
- (k) In the case of a renunciation by an appointee of an exercised power of appointment, a copy of the instrument of renunciation must be delivered:
  - (1) To the holder of the power or the personal representative of the holder's estate;
  - (2) To the fiduciary under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and
  - (3) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(l) In the case of a renunciation of a power of appointment by the holder of the power, a copy of the instrument of renunciation must be delivered:

- (1) To the fiduciary acting under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and
- (2) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(m) In the case of a renunciation by a fiduciary of a right, privilege, power, or immunity relating to a trust or estate, a copy of the instrument of renunciation must be delivered as provided in subsection (c), (d), (e), or (f) of this section, as if the power renounced were an interest in property.

(n) In the case of a renunciation of a power by an agent, including an attorney-in-fact, a copy of the instrument of renunciation must be delivered to the principal or the principal's legal representative other than the agent.

(o) In the case of a renunciation by a trustee of a charitable trust, a copy of the instrument of renunciation must be delivered to the North Carolina Attorney General in addition to any other delivery required by this section.

(p) In the case of a renunciation by a donee, a copy of the instrument of renunciation must be delivered to the persons to whom the person renouncing reasonably believes the renounced interest passes, at their last addresses known to the person renouncing, and to the donor or the donor's legal representative other than the donee.

(q) The failure to deliver a copy of the instrument of renunciation as required in this section does not affect the validity of the renunciation for purposes of G.S. 31B-3 even though the renunciation may not be recognized as a disclaimer for federal estate tax purposes. (2009-48, s. 5.)

### **§ 31B-3. Effect of renunciation.**

(a) Unless the decedent, donee of a power of appointment, or creator of an interest under an inter vivos instrument has otherwise provided in the instrument creating the interest, the property or interest renounced devolves as follows:

- (1) If the renunciation is filed within the time period described in G.S. 31B-2(a), the property or interest renounced devolves and any interest that takes effect in possession or enjoyment after the termination of the property or interest renounced takes effect as if the person whose property or interest is being renounced had predeceased the date the transfer of the renounced interest was complete for federal and State inheritance, estate, and gift tax purposes, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity never existed. Any such renunciation relates back for all purposes to the date the transfer of the renounced interest was complete for the purpose of those taxes, and the spouse of the person whose property or interest is being renounced has no elective share or other marital interest in the renounced property.
- (2) If the renunciation is not filed within the time period described in G.S. 31B-2(a), the person whose property or interest is being renounced is deemed to have made a transfer of the property or interest and the property or interest devolves

and any interest that takes effect in possession or enjoyment after the termination of the property or interest renounced takes effect as if the person whose property or interest is being renounced had died on the date the renunciation is filed, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity ceased to exist as of the date the renunciation is filed.

- (3) Any future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the person whose property or interest is being renounced had died on the date determined under subdivision (1) or (2) of this subsection, and upon the filing of the renunciation the persons in being as of the time the person whose property or interest is being renounced is deemed to have died will immediately become entitled to possession or enjoyment of any such future interest.

(b) In the event that the property or interest renounced was created by testamentary disposition, the devolution of the property or interest renounced shall be as provided in G.S. 31-42 notwithstanding that in fact the person whose property or interest is being renounced has not actually died before the testator.

(c) In the event that the decedent dies intestate, or the ownership or succession to property or to an interest is to be determined as though a decedent had died intestate, and the person whose property or interest is being renounced has living issue who would have been entitled to an interest in the property or interest if the person whose property or interest is being renounced had predeceased the decedent, then the property or interest renounced shall be distributed to such issue, per stirpes. If the person whose property or interest is being renounced does not have such issue, then the property or interest shall be distributed as though the person whose property or interest is being renounced had predeceased the decedent.

(d) In the event that the property or interest renounced was created by a revocable or irrevocable inter vivos trust, the devolution of the property or interest renounced shall be as provided in G.S. 36C-6-605 notwithstanding that in fact the person whose property or interest is being renounced has not actually died before the event that would otherwise cause the property or interest renounced to pass to the person whose property or interest is being renounced.

(e) If a trustee files, within the time period described in G.S. 31B-2(a), a renunciation of an interest in property, the interest does not become trust property. If a trustee does not file a renunciation of an interest in property within the time period described in G.S. 31B-2(a), the interest passes to the person or persons who would have taken the interest as of the date of the renunciation if the trust had never existed.

(f) Except as provided in the instrument of renunciation, if a renunciation causes property to pass to a trust in which the person whose property or interest is being renounced holds a power of appointment, the person renouncing is deemed to have renounced the power of appointment with respect to assets passing into the trust by reason of the renunciation if the person renouncing is a person who holds a right to renounce the power of appointment.

(g) Unless otherwise provided in the instrument of renunciation, the interest in property being renounced by a surviving tenant by the entirety upon the death of the other tenant is deemed to be a one-half interest in the former entirety property, and title to that one-half interest passes as if the deceased tenant survived the tenant renouncing.

(h) Unless otherwise provided in the instrument of renunciation, the interest in property being renounced by a surviving joint tenant with right of survivorship is deemed to be the fractional interest of the deceased joint tenant to which the surviving joint tenant would have been entitled by right of survivorship, and title to that fractional interest passes as if the tenant renouncing predeceased the deceased joint tenant.

(i),(j) Reserved for future codification purposes.

(k) A renunciation is binding upon the person whose property or interest is being renounced and all persons claiming through or under that person. (1975, c. 371, s. 1; 1979, c. 525, s. 6; 1989, c. 684, s. 5; 1993, c. 308, ss. 1, 2; 1998-148, s. 3; 2009-48, s. 6.)

#### **§ 31B-4. Waiver and bar.**

(a) The right to renounce property or an interest therein is barred 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, or
- (3) Repealed by Session Laws 1998-148, s. 4.
- (4) A sale of the property or interest under judicial sale made before the renunciation is effected.

(b) An instrument waiving or barring the right to renounce is binding upon the person waiving the right to renounce or the person barred from renouncing and all persons claiming through or under that person.

(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 or record notice of the facts that constitute a waiver or bar to the right of renunciation.

(e) The right to renounce property or an interest in property pursuant to this Chapter is not barred by an acceptance of the property, interest, or benefit thereunder; provided, however, an acceptance of the property, interest, or benefit thereunder may preclude such renunciation from being a qualified renunciation for federal and State inheritance, estate, and gift tax purposes.

(f) An instrument waiving or barring the right to renounce an interest in real property is not effective as to persons protected under G.S. 47-18 or G.S. 47-20 until either (i) registered as provided in those sections or (ii) registered pursuant to a judicial sale proceeding as described in subdivision (4) of subsection (a) of this section in which the person renouncing is a party. The instrument of waiver or bar shall be indexed in the grantor's index under (i) the name of the transferor of the property or interest in the property or creator of the power or holder of the power and (ii) the name of the person whose renunciation is waived or barred. (1975, c. 371, s. 1; 1989, c. 684, s. 6; 1998-148, ss. 4, 5; 2000-140, s. 8; 2009-48, s. 7.)

#### **§ 31B-4.1. Tax qualified renunciation.**

If, as a result of a renunciation, the renounced property is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the person whose property or interest is being renounced, then the renunciation is an effective renunciation,



notwithstanding any other provision of this Chapter. This section does not preclude an action for breach of fiduciary duty. (2009-48, s. 8.)

**§ 31B-5. Exclusiveness of remedy.**

This Chapter does not exclude or abridge 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, or any fiduciary right, power, privilege, or immunity. (1975, c. 371, s. 1; 1989, c. 684, s. 7.)

**§ 31B-6:** Repealed by Session Laws 2009-48, s. 9, effective October 1, 2009, and applicable to renunciations and powers of attorney executed on or after that date.

**§ 31B-7. Short title.**

This Chapter may be cited as the Renunciation of Property and Renunciation of Fiduciary Powers Act. (1975, c. 371, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 11.)