

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

FILED SENATE
May 15, 2014
S.B. 773
PRINCIPAL CLERK

S

D

SENATE DRS25127-MNz-23* (05/13)

Short Title: Implement GSC Recommendations. (Public)

Sponsors: Senator Hartsell (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GENERAL STATUTES COMMISSION TO MODIFY THE SLAYER STATUTE DUE TO THE NEED TO ACCOUNT FOR PROPERTY HELD IN A JOINT TENANCY IN UNEQUAL SHARES, TO CLARIFY THE PROVISIONS FOR FILING CERTIFIED COPIES OF PROBATED WILLS IN OTHER COUNTIES WHERE A DECEDENT HAS REAL PROPERTY, TO DELETE THE STATUTORY FORMS FOR JUDGMENT DEBTORS CLAIMING EXEMPTIONS UNDER G.S. 1C-1601 BECAUSE THE ADMINISTRATIVE OFFICE OF THE COURTS ALREADY HAS WIDELY USED FORMS FOR THAT PURPOSE, AND TO RESOLVE AN APPARENT CONFLICT BETWEEN RULE 8 OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE, DEALING WITH THE CONTENT OF PLEADINGS, AND G.S. 7A-243, DEALING WITH THE PROPER TRIAL COURT DIVISION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART 1. MODIFICATION OF SLAYER STATUTE

SECTION 1.1. G.S. 31A-6 reads as rewritten:

"§ 31A-6. Survivorship property.

(a) Where the slayer and the decedent hold property with right of survivorship as joint tenants, joint owners, joint obligees or ~~otherwise,~~otherwise, the following apply:

(1) ~~the~~The decedent's share ~~thereof shall pass~~passes immediately upon the death ~~of the decedent to his estate,~~decedent's death to the decedent's estate.

(2) ~~and the~~The slayer's share shall be held by the slayer ~~during his lifetime~~for life and at ~~his~~the slayer's death shall pass to the ~~estate of the decedent.~~estate. ~~During his lifetime, the slayer shall have the right to the income from his share of the property subject to the rights of creditors of the slayer.~~decedent's estate.

(b) Where three or more persons, including the slayer and the decedent, hold property with right of survivorship as joint tenants, joint owners, joint obligees or ~~otherwise,~~ ~~the portion of the decedent's share which would have accrued to the slayer as a result of the death of the decedent shall pass to the estate of the decedent. If the slayer becomes the final survivor, one half of the property then held by the slayer shall pass immediately to the estate of the decedent, and upon the death of the slayer the remaining interest of the slayer shall pass to the estate of the decedent. During his lifetime the slayer shall have the right to the income from his share of the property subject to the rights of creditors of the slayer.~~otherwise, the following apply:



- 1 (1) The decedent's share is converted effective upon the decedent's death to that
 2 of a tenant in common and passes to the decedent's estate.
 3 (2) The remaining persons, including the slayer, continue to hold their shares
 4 with right of survivorship.
 5 (3) If the slayer becomes the final survivor, upon the slayer's death, the slayer's
 6 share, which includes the other shares that passed to the slayer as the final
 7 survivor, shall pass to the decedent's estate.

8 (c) During the slayer's lifetime, the slayer shall have the right to the income from the
 9 slayer's share, subject to the rights of the slayer's creditors.

10 (d) Nothing in this section prohibits a partitioning of the property pursuant to Chapter
 11 46 of the General Statutes or severing the joint tenancy in any manner provided by law. Any
 12 share taken by the slayer by reason of partition or severance shall be subject to subdivision
 13 (b)(3) of this section."

14 **SECTION 1.2.** This Part becomes effective October 1, 2014, and applies to
 15 property subject to Article 3 of Chapter 31A of the General Statutes as to decedents dying on or
 16 after that date.

17
 18 **PART II. CLARIFY THE PROVISIONS FOR FILING CERTIFIED COPIES OF**
 19 **PROBATED WILLS IN OTHER COUNTIES WHERE A DECEDENT HAS REAL**
 20 **PROPERTY**

21 **SECTION 2.1.** G.S. 28A-2A-13 reads as rewritten:

22 **"§ 28A-2A-13. Wills filed in clerk's ~~office~~; office; certified copies filed for real property in**
 23 **other counties.**

24 (a) All original probated wills shall remain in the ~~clerk's office~~; office of the clerk of
 25 superior court, among the public records of the court where the same shall be proved, and to
 26 such wills any person may have access, as to the other records. ~~wills were probated.~~

27 (b) If ~~said a probated will contains a devise of real estate~~, devises real property outside
 28 said ~~the~~ county where said will is ~~the will was~~ probated, then a copy of the said will, together
 29 with the ~~probate of the same~~, a copy of the will and a copy of the certificate of probate of the
 30 will, certified under the hand and seal of the clerk of the superior court of ~~said the~~ county where
 31 the will was probated, may be ~~recorded in the book of wills and~~ filed in the office of the clerk
 32 of the superior court of any other county in ~~the~~ this State in which ~~said land is situated~~ the real
 33 property is situated. The filing of the probated will in the county where the real property is
 34 situated shall have ~~with~~ the same effect as to ~~passing the title to said real estate~~ for purposes of
 35 G.S. 31-39(c) as to the priorities of claims against the real property as if ~~said the~~ will had
 36 originally been probated and ~~filed in said county and the clerk of the superior court of said~~
 37 ~~last mentioned county~~ in that county and as if the clerk of superior court of that county ~~had had~~
 38 jurisdiction to probate the ~~same~~ will."

39 **SECTION 2.2.** G.S. 31-39(c) reads as rewritten:

40 (c) A will duly probated in one county of this State is not effective to pass title to an
 41 interest in real property located in any other county of this State as against lien creditors or
 42 purchasers for valuable consideration from the intestate heirs at law of a decedent unless a
 43 certified copy of the will ~~is and~~ a certified copy of the certificate of probate of the will are filed
 44 in the office of the clerk of superior court in the county where the real property lies within the
 45 time limitation set forth in subsection (b) of this section."

46 **SECTION 2.3.** This Part becomes effective October 1, 2014, and applies to estates
 47 of decedents dying before, on, or after that date.

48
 49 **PART III. DELETE STATUTORY FORMS IN G.S. 1C-1603**

50 **SECTION 3.1.** G.S. 1C-1603 reads as rewritten:

51 **"§ 1C-1603. Procedure for setting aside exempt property.**

(a) Motion or Petition; Notice. –

(1) ~~A judgment debtor may have his exempt property designated by motion after~~ After judgment has been entered against him a judgment debtor, that person's exempt property may be designated by motion.

(2) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 10.

(3) The clerk or district court judge may determine that particular property is not exempt even though there has been no proceeding to designate the exemption.

(4) After judgment, except as provided in ~~G.S. 1C-1603(a)(3)~~ subdivision (3) of this subsection or when exemptions have already been designated, the clerk may not issue an execution or writ of possession unless notice from the court has been served upon the judgment debtor advising the debtor of the debtor's rights. The judgment creditor ~~shall~~ must cause the notice, which ~~shall~~ must be accompanied by the form for the statement by the debtor under ~~subsection (e)~~ subsection (c1) of this section, to be served on the debtor as provided in G.S. 1A-1, Rule 4(j)(1). If the judgment debtor cannot be served as provided ~~above,~~ under G.S. 1A-1, Rule 4(j)(1), the judgment creditor may serve the judgment debtor by mailing a copy of the notice to the judgment debtor at the debtor's last known address. Proof of service by certified or registered mail or personal service is as provided in G.S. 1A-1, Rule 4. The judgment creditor may prove service by mailing to last known address by filing a certificate that the notice was served indicating the circumstances warranting the use of such service and the date and address of service.

(5) The Administrative Office of the Courts must provide a form for the notice from the court required by subdivision (4) of this subsection. The notice shall be substantially in the following form; must inform the debtor that:

- a. The judgment debtor has the right to retain certain property free from collection efforts by the judgment creditor.
- b. To preserve that right, the judgment debtor is required to respond to the notice by filing a motion or petition to claim exempt property, including a schedule of assets that are claimed as exempt, no later than 20 days after the debtor receives the notice, and that the judgment debtor must also mail or take a copy to the judgment creditor at the address provided in the notice.
- c. The judgment debtor has the option to request a hearing to claim exemptions rather than filing a schedule of assets.
- d. The judgment debtor may have exemptions under State and federal law that are in addition to those listed on the form for the debtor's statement that is included with the notice.
- e. There is a procedure for challenging an attachment or levy on the judgment debtor's property.
- f. The judgment debtor may wish to consider hiring an attorney.
- g. Failure to respond within the required time results in the loss of statutory rights.

NORTH CAROLINA

_____ COUNTY

IN THE GENERAL COURT
OF JUSTICE DISTRICT
COURT DIVISION
CvD

_____)
Judgment Creditor)

NOTICE OF
PETITION (OR

1)	MOTION) TO SET
2	vs.)	OFF DEBTOR'S
3	_____)	EXEMPT PROPERTY

GREETINGS:

~~You have been named as a "judgment debtor" in a proceeding initiated by a "judgment creditor". A "judgment debtor" is a person who a court has declared owes money to another, the "judgment creditor". The purpose of this proceeding is to make arrangements to collect that debt from you personally or from property you own.~~

~~It is important that you respond to this notice no later than 20 days after you receive it because you may lose valuable rights if you do nothing. You may wish to consider hiring an attorney to help you with this proceeding to make certain that you receive all the protections to which you are entitled under the North Carolina Constitution and laws.~~

~~NOTICE TO JUDGMENT DEBTOR:~~

~~THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED ON THE "SCHEDULE OF DEBTOR'S PROPERTY AND REQUEST TO SET ASIDE EXEMPT PROPERTY" THAT IS ENCLOSED WITH THIS NOTICE.~~

~~These exemptions may include social security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60 days. There is available to you a prompt procedure for challenging an attachment or levy on your property.~~

~~(b) Contents of Motion or Petition. – The motion or petition must:~~

- ~~(1) Name the judgment debtor;~~
- ~~(2) Name the judgment creditors of the debtor insofar as they are known to the movant;~~
- ~~(3) If it is a motion to modify a previously allocated exemption, describe the change of condition (if the movant received notice of the exemption hearing) and the modification desired.~~

~~(c) Statement by the Debtor. – When proceedings are instituted, the judgment debtor shall must file with the court a schedule of:~~

- ~~(1) The debtor's assets, including their location;~~
- ~~(2) The debtor's debts and the names and addresses of the debtor's creditors;~~
- ~~(3) The property that the debtor desires designated as exempt.~~

~~The form for the statement shall be substantially as follows:~~

36	NORTH CAROLINA	IN THE GENERAL COURT
37	_____ COUNTY	OF JUSTICE DISTRICT
38		COURT DIVISION
39		CvD

41	Judgment Creditor)	SCHEDULE OF DEBTOR'S
42)	PROPERTY
43	vs.)	AND REQUEST TO
44)	SET ASIDE EXEMPT
45	Judgment Debtor)	PROPERTY

~~NOTICE TO JUDGMENT DEBTOR:~~

~~THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED BELOW.~~

~~These exemptions may include social security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60~~

1 days. There is available to you a prompt procedure for challenging an attachment or levy on
2 your property:

3 I, _____, being duly sworn do depose and say:
4 (fill in your name)

5 1. That I am a citizen and resident of _____ County,
6 North Carolina;

7 2. That I was born on _____;
8 (date of birth)

9 3. That I am (married to _____)
10 (spouse's name)

11 _____;
12 (not married)

13 4. That the following persons live in my household and are in substantial need of my
14 support:

15 NAME	RELATIONSHIP TO DEBTOR	AGE
16 _____	_____	_____
17 _____	_____	_____
18 _____	_____	_____
19 _____	_____	_____

20 (Use additional space, as necessary)

21 5. That (I own) (I am purchasing) (I rent) (choose one; mark out the other choices) a
22 (house) (trailer) (apartment) (choose one; mark out the other choices)

23 located at _____
24 which is my residence. (address, city, zip code)

25 6. That I (do) (do not) own any other real property. If other real property is owned, list that
26 property on the following lines; if no other real property is owned, mark "not applicable" on the
27 first line.
28

29 _____

30 _____

31 _____

32 _____

33 7. That the following persons are, so far as I am able to tell, all of the persons or companies
34 to whom I owe money:

35 _____

36 _____

37 _____

38 _____

39 8. That I wish to claim my interest in the following real or personal property, or in a
40 cooperative that owns property, that I use as a residence or my dependent uses as a residence. I
41 also wish to claim my interest in the following burial plots for myself or my dependents. I
42 understand that my total interest claimed in the residence and burial plots may not exceed
43 \$35,000, except that if I am unmarried and am 65 years of age or older, I am entitled to claim a
44 total exemption in the residence and burial plots not to exceed \$60,000 so long as the property
45 was previously owned by me as a tenant by the entireties or as a joint tenant with rights of
46 survivorship, and the former co-owner of the property is deceased.

47 I understand that I am not entitled to this exemption if I take the homestead exemption
48 provided by the Constitution of North Carolina in other property. I understand that if I wish to
49 claim more than one parcel exempt I must attach additional pages setting forth the following
50 information for each parcel claimed exempt.

51 Property Location:

1 County _____ Township _____

2 Street Address _____

3 Legal Description:

4 Number by which county tax assessor identifies property _____

5 Description (Attach a copy of your deed or other instrument of conveyance that describes
6 the property and indicate here: _____ or describe the property in as much detail as possible.
7 Attach additional sheets if necessary.)

8 _____

9 _____

10 _____

11 Record Owner(s) _____

12 _____

13 _____

14 Estimated Value: _____

15 Lienholders:

16 (1) Name _____ Current Balance _____

17 Address _____

18 (2) Name _____ Current Balance _____

19 Address _____

20 (3) Name _____ Current Balance _____

21 Address _____

22 (4) If others, attach additional pages.

23 If you are unmarried and 65 years of age or older, specify which, if any, property listed
24 above was previously owned by you as a tenant by the entireties or as a joint tenant with rights
25 of survivorship and as to which the former co-owner of the property is deceased:

26 9. That I wish to claim the following life insurance policies whose sole beneficiaries are
27 (my wife) (my children) (my wife and children) as exempt:

28 Name of Insurer	Policy Number	Face Value	Beneficiary(ies)
29 _____	_____	_____	_____
30 _____	_____	_____	_____
31 _____	_____	_____	_____

32 10. That I wish to claim the following items of health care aid necessary for (myself) (my
33 dependents) to work or sustain health:

34 Item	Purpose	Person using item
35 _____	_____	_____
36 _____	_____	_____
37 _____	_____	_____

38 11. That I wish to claim the following implements, professional books, or tools (not to
39 exceed \$2,000), of my trade or the trade of my dependent. I understand that such property
40 purchased within 90 days of this proceeding may not be exempt:

41 Item	Estimated Value
42 _____	_____
43 _____	_____
44 _____	_____

45 12. That I wish to claim the following personal property consisting of household
46 furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical
47 instruments as exempt from the claims of my creditors. I affirm, that these items of personal
48 property are held primarily for my personal, family or household use or for such use by my
49 dependents.

50 I understand that I am entitled to personal property worth the sum of \$5,000. I understand
51 that I am also entitled to \$1,000 for each person dependent on me for support, but not to exceed

1 \$4,000 for dependents. I further understand that I am entitled to this amount after deduction
2 from the value of the property the amount of any valid lien or purchase money security interest
3 and that property purchased within 90 days of this proceeding may not be exempt.

4 Item (or class) 5 of Property	6 Amount of Lien 7 or Security 8 Interest	9 Location	10 Estimated 11 Value of 12 Debtor's 13 Interest
14 _____	15 _____	16 _____	17 _____
18 _____	19 _____	20 _____	21 _____
22 _____	23 _____	24 _____	25 _____

11 13. That I wish to claim my interest in the following motor vehicle as exempt from the
12 claims of my creditors. I understand that I am entitled to my interest in a motor vehicle worth
13 the sum of \$3,500 after deduction of the amount of any valid liens or purchase money security
14 interest. I understand that a motor vehicle purchased within 90 days of this proceeding may not
15 be exempt.

16 Make and 17 Model of 18 Motor Vehicle	19 Year	20 Name(s) of 21 Title Owner 22 of Record	23 Name(s) of 24 Lien Holder(s) 25 of Record	26 Estimated 27 Value of 28 Debtor's 29 Interest
30 _____	31 _____	32 _____	33 _____	34 _____

21 14. That I wish to claim as exempt the following compensation that I received or to which I
22 am entitled for the personal injury of myself or a person upon whom I was dependent for
23 support, including compensation from a private disability policy or an annuity, or compensation
24 that I received for the death of a person upon whom I was dependent for support. I understand
25 that this compensation is not exempt from claims for funeral, legal, medical, dental, hospital or
26 health care charges related to the accident or injury that resulted in the payment of the
27 compensation to me. I understand that if I wish to claim more than one amount of
28 compensation exempt, I must attach additional pages setting forth the following information for
29 each amount of compensation claimed exempt.

- 30 (a) amount of compensation-
- 31 (b) method of payment: lump sum or installments-
- 32 (If installments, state amount, frequency and duration of payments)
- 33
- 34 (c) name and relationship to debtor of person(s) injured or killed giving rise to
- 35 compensation-
- 36 (d) location/source of compensation if received in lump or installments, including name
- 37 and account number of any disability policy or annuity-
- 38
- 39 (e) unpaid debts arising out of the injury or death giving rise to compensation
- 40

41 Name and Address	42 Services Rendered	43 Amount of Debt
44 _____	45 _____	46 _____
47 _____	48 _____	49 _____

44 15. That I wish to claim the following property as exempt because I claimed residential real
45 or personal property as exempt that is worth less than \$35,000 or I made no claim for a
46 residential exemption under section (8) above. I understand that I am entitled to an exemption
47 of up to \$5,000 in any property only if I made no claim under section (8) above or a claim that
48 was less than \$35,000 under section (8) above. I understand that I am entitled to claim any
49 unused amount that I was permitted to make under section (8) above up to a maximum of
50 \$5,000 in any property. (Examples: (a) if you claim \$34,000 under section (8), \$1,000 allowed
51 here; (b) if you claim \$30,000 under section (8), \$5,000 allowed here; (c) if you claim \$35,000

under section (8), no claim allowed here.) I further understand that the amount of my claim under this section is after the deduction from the value of this property of the amount of any valid lien or purchase money security interests and that tangible personal property purchased within 90 days of this proceeding may not be exempt.

PERSONAL PROPERTY:

Property Location	Amount of Liens or Purchase Money Security Interests	Value of Debtor's Interest
-------------------	--	----------------------------------

REAL PROPERTY (I understand that if I wish to claim more than one parcel exempt, I must attach additional pages setting forth the following information for each parcel claimed exempt):

Property Location

County _____ Township _____

Street Address _____

Legal Description:

Number by which county tax assessor identifies property

Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here: _____ or describe the property in as much detail as possible. Attach additional sheets if necessary.)

Record Owner(s):

Estimated Value:

Lienholders:

(1) Name _____ Current Balance _____

Address _____

(2) Name _____ Current Balance _____

Address _____

(3) Name _____ Current Balance _____

Address _____

(4) If others, attach additional pages.

16. That I wish to claim as exempt the following retirement plans that I have that are individual retirement plans as described in the Internal Revenue Code or that are treated in the same manner as an individual retirement plan under the Internal Revenue Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code.

Type of Retirement Account	Name of Account	Account Number
_____	_____	_____
_____	_____	_____
_____	_____	_____

17. That I wish to claim as exempt the following funds I hold in a college savings plan, not to exceed \$25,000. I understand that to qualify for this exemption, the college savings plan must qualify as a college savings plan under section 529 of the Internal Revenue Code, and the college savings plan must be for my child and must actually be used for my child's college or university expenses. I understand I may not exempt any funds I placed in this account within the preceding 12 months, except to the extent that any contributions were made in the ordinary course of my financial affairs and were consistent with my past pattern of contributions.

College Savings Plan	Account Number	Value	Name(s) of Child(ren) Beneficiaries
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

18. That I wish to claim as exempt the following retirement benefits to which I am entitled to under the retirement plans of other states and governmental units of other states. I understand that these benefits are exempt only to the extent these benefits are exempt under the laws of the state or governmental unit under which the benefit plan was established.

State/Governmental Unit	Name of Retirement Plan	Identifying Number
_____	_____	_____
_____	_____	_____
_____	_____	_____

19. That I wish to claim as exempt any alimony, support, separate maintenance, or child support payments or funds that I have received or that I am entitled to receive. I understand that these payments are exempt only to the extent that they are reasonably necessary for my support or for the support of a person dependent on me for support.

Type of Support	Person Paying Support	Amount & Location of Funds
_____	_____	_____
_____	_____	_____
_____	_____	_____

20. That the following is a complete listing of all of my assets that I have not claimed as exempt under any of the preceding paragraphs:

Item	Location	Estimated value
_____	_____	_____
_____	_____	_____
_____	_____	_____

This the ____ day of ____, ____

Judgment Debtor

Sworn to and Subscribed before me this ____ day of ____, ____.

Notary Public _____ My Commission Expires: ____

(c1) Form for Debtor's Statement. – The Administrative Office of the Courts must provide a form for the schedule required under subsection (c) of this section.

(d) Notice to Persons Affected. – If the judgment debtor moves to designate his exemptions, a copy of the motion and schedule must be served on the judgment creditor as provided in G.S. 1A-1, Rule 5.

(e) Procedure for Setting Aside Exempt Property. –

(1) When served with the notice provided in G.S. 1C 1603(a)(4), under subdivision (a)(4) of this section, the judgment debtor may either file a

- 1 motion to designate ~~his~~ exemptions with a schedule of assets or may request,
2 in writing, a hearing before the clerk to claim exemptions.
- 3 (2) If the judgment debtor does not file a motion to designate exemptions with a
4 schedule of assets within 20 days after notice of ~~his~~ the debtor's rights was
5 served in accordance with ~~G.S. 1C 1603(a)(4)~~ subdivision (a)(4) of this
6 section, or if ~~he~~ the debtor does not request a hearing before the clerk within
7 20 days after service of the notice of rights and appear at the requested
8 hearing, the judgment debtor has waived the exemptions provided in this
9 Article and in Sections 1 and 2 of Article X of the North Carolina
10 Constitution. Upon request of the judgment creditor, the clerk ~~shall~~ must
11 issue a writ of execution or writ of possession.
- 12 (3) If the judgment debtor moves to designate ~~his~~ exemptions by filing a motion
13 and schedule of assets, the judgment creditor ~~is~~ must be served as provided
14 in ~~G.S. 1C 1603(d)~~ subsection (d) of this section.
- 15 (4) If the judgment debtor requests a hearing before the clerk to claim
16 exemptions, the clerk ~~sets~~ must set a hearing date and ~~gives~~ give notice of
17 the hearing to the judgment debtor and judgment creditor. At the hearing, the
18 judgment debtor may claim ~~his~~ the debtor's exemptions.
- 19 (5) The judgment creditor has 10 days from the date served with a motion and
20 schedule of assets or from the date of a hearing to claim exemptions to file
21 an objection to the judgment debtor's schedule of exemptions.
- 22 (6) If the judgment creditor files no objection to the schedule filed by the
23 judgment debtor or claimed at the requested hearing, the clerk ~~shall~~ must
24 enter an order designating the property allowed by law and scheduled by the
25 judgment debtor as exempt property. Upon request of the judgment creditor,
26 the clerk ~~shall~~ must issue an execution or writ of possession except for
27 exempt property.
- 28 (7) If the judgment creditor objects to the schedule filed or claimed by the
29 judgment debtor, the clerk must place the motion for hearing by the district
30 court judge, without a jury, at the next civil session.
- 31 (8) The district court judge must determine the value of the property. The
32 district court judge or the clerk, upon order of the judge, may appoint a
33 qualified person to examine the property and report its value to the judge.
34 Compensation of that person must be advanced by the person requesting the
35 valuation and is a court cost having priority over the claims.
- 36 (9) The district court judge must enter an order designating exempt property.
37 Supplemental reports and orders may be filed and entered as necessary to
38 implement the order.
- 39 (10) Where the order designating exemptions indicates excess value in exempt
40 property, the clerk, in an execution, may order the sale of property having
41 excess value and appropriate distribution of the proceeds.
- 42 (11) The clerk or district court judge may permit a particular item of property
43 having value in excess of the allowable exemption to be retained by the
44 judgment debtor upon ~~his~~ the debtor's making available to judgment
45 creditors money or property not otherwise available to them in an amount
46 equivalent to the excess value. Priorities of judgment creditors are the same
47 in the substituted property as they were in the original property.
- 48 (12) Appeal from a designation of exempt property by the clerk is to the district
49 court judge. A party has 10 days from the date of entry of an order to appeal.
50 Appeal from a designation of exempt property by a district court judge is to
51 the Court of Appeals. Decisions of the Court of Appeals with regard to

1 questions of valuation of property are final as provided in G.S. 7A-28. Other
2 questions may be appealed as provided in G.S. 7A-30 and 7A-31.

3 (f) Notation of Order on Judgment Docket. – A notation of the order setting aside
4 exempt property must be entered by the clerk of court on the judgment docket opposite the
5 judgment that was the subject of the enforcement proceeding. If real property located in a
6 county other than the county in which the judgment was rendered is designated as exempt and
7 the judgment has already been docketed in that county, the clerk must send a notice of the
8 designation of exempt property to the county where the property is located. The clerk of the
9 county where the land is located ~~shall~~must enter a notation of the designation of exempt
10 property on the judgment docket. If a judgment is docketed in a county where real property is
11 located after that real property has been designated as exempt, the transcript of judgment must
12 indicate that the exemptions have been designated. The clerk in the county receiving the
13 transcript must enter the notation of designation of exempt property as well as docket the
14 judgment.

15 (g) Modification. – The judgment debtor's exemption may be modified by motion in the
16 original exemption proceeding by anyone who did not receive notice of the exemption hearing.
17 Also, the debtor's exemption may be modified upon a change of circumstances, by motion in
18 the original exemption proceeding, made by the debtor or anyone interested. A substantial
19 change in value may constitute changed circumstances. Modification may include the
20 substitution of different property for the exempt property.

21 (h) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 14."

22 **SECTION 3.2.** This Part becomes effective October 1, 2014. This Part does not
23 affect any debtor's statements filed before that date.

24
25 **PART IV. RESOLUTION OF CONFLICT BETWEEN RULE 8 OF THE NORTH**
26 **CAROLINA RULES OF CIVIL PROCEDURE AND G.S. 7A-243**

27 **SECTION 4.1.** G.S. 1A-1, Rule 8(a), reads as rewritten:

28 "(a) Claims for relief. – A pleading which sets forth a claim for relief, whether an
29 original claim, counterclaim, crossclaim, or third-party claim shall contain

30 (1) A short and plain statement of the claim sufficiently particular to give the
31 court and the parties notice of the transactions, occurrences, or series of
32 transactions or occurrences, intended to be proved showing that the pleader
33 is entitled to relief, and

34 (2) A demand for judgment for the relief to which he deems himself entitled.
35 Relief in the alternative or of several different types may be demanded. In all
36 negligence actions, and in all claims for punitive damages in any civil action,
37 wherein the matter in controversy exceeds the sum or value of ten thousand
38 dollars (\$10,000), the pleading shall not state the demand for monetary
39 relief, but shall state that the relief demanded is for damages incurred or to
40 be incurred in excess of ten thousand dollars ~~(\$10,000)~~(\$10,000) and shall
41 also state the proper trial court division under G.S. 7A-243. If the amount in
42 controversy is between ten thousand dollars (\$10,000) and twenty-five
43 thousand dollars (\$25,000), the pleading may state either trial division.
44 However, at any time after service of the claim for relief, any party may
45 request of the claimant a written statement of the monetary relief sought, and
46 the claimant shall, within 30 days after such service, provide such statement,
47 which shall not be filed with the clerk until the action has been called for
48 trial or entry of default entered. Such statement may be amended in the
49 manner and at times as provided by Rule 15."

50 **SECTION 4.2.** G.S. 1A-1, Rule 8(a), as amended by Section 4.1 of this act, reads
51 as rewritten:

1 "(a) Claims for relief. – A pleading which sets forth a claim for relief, whether an
2 original claim, counterclaim, crossclaim, or third-party claim shall contain

3 (1) A short and plain statement of the claim sufficiently particular to give the
4 court and the parties notice of the transactions, occurrences, or series of
5 transactions or occurrences, intended to be proved showing that the pleader
6 is entitled to relief, and

7 (2) A demand for judgment for the relief to which he deems himself entitled.
8 Relief in the alternative or of several different types may be demanded. In all
9 negligence actions, and in all claims for punitive damages in any civil action,
10 wherein the matter in controversy exceeds the sum or value of ten thousand
11 dollars (\$10,000), the pleading shall not state the demand for monetary
12 relief, but shall state that the relief demanded is for damages incurred or to
13 be incurred in excess of ten thousand dollars (\$10,000) and shall also state
14 the proper trial court division under G.S. 7A-243.~~If the amount in~~
15 ~~controversy is between ten thousand dollars (\$10,000) and twenty five~~
16 ~~thousand dollars (\$25,000), the pleading may state either trial division.~~
17 However, at any time after service of the claim for relief, any party may
18 request of the claimant a written statement of the monetary relief sought, and
19 the claimant shall, within 30 days after such service, provide such statement,
20 which shall not be filed with the clerk until the action has been called for
21 trial or entry of default entered. Such statement may be amended in the
22 manner and at times as provided by Rule 15."

23 **SECTION 4.3.** Section 4.1 of this act becomes effective October 1, 2014, and
24 applies to pleadings filed on or after that date. Section 4.2 of this act becomes effective July 1,
25 2015, and applies to pleadings filed on or after that date.

26 **PART V. EFFECTIVE DATE**

27 **SECTION 5.1.** Except as otherwise provided, this act is effective when it becomes
28 law.
29