

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SESSION LAW 2014-107
SENATE BILL 773

AN ACT TO IMPLEMENT (I) 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, AND 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, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND (II) THE RECOMMENDATIONS OF THE NORTH CAROLINA BAR ASSOCIATION TO CLARIFY THE REQUIREMENTS FOR THE TIMELY SUBSTITUTION OF A PERSONAL REPRESENTATIVE IN PLACE OF A DECEDENT IN AN ACTION PENDING AT THE DECEDENT'S DEATH AND TO CLARIFY THAT THE COMMON LAW RULE AGAINST ACCUMULATIONS DOES NOT APPLY TO TRUSTS IN THIS STATE; AND TO MAKE OTHER CHANGES TO THE LAW.

The General Assembly of North Carolina enacts:

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



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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 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

~~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 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:

NORTH CAROLINA	IN THE GENERAL COURT
_____ COUNTY	OF JUSTICE DISTRICT
	COURT DIVISION
	CvD

Judgment Creditor)	SCHEDULE OF DEBTOR'S
)	PROPERTY
vs.)	AND REQUEST TO
)	SET ASIDE EXEMPT
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 days. There is available to you a prompt procedure for challenging an attachment or levy on your property.~~

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

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

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

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

(not married)

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

NAME	RELATIONSHIP TO DEBTOR	AGE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Use additional space, as necessary)

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

which is my residence. _____ (address, city, zip code)

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

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

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

I understand that I am not entitled to this exemption if I take the homestead exemption provided by the Constitution of North Carolina in other 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.

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

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

Name of Insurer	Policy Number	Face Value	Beneficiary(ies)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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

Item	Purpose	Person using item
_____	_____	_____
_____	_____	_____

15. That I wish to claim the following property as exempt because I claimed residential real or personal property as exempt that is worth less than \$35,000 or I made no claim for a residential exemption under section (8) above. I understand that I am entitled to an exemption of up to \$5,000 in any property only if I made no claim under section (8) above or a claim that was less than \$35,000 under section (8) above. I understand that I am entitled to claim any unused amount that I was permitted to make under section (8) above up to a maximum of \$5,000 in any property. (Examples: (a) if you claim \$34,000 under section (8), \$1,000 allowed 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/Government 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. The form must include a statement to the effect that North Carolina law and federal law also exempt certain other property not included in the form, such as Social Security benefits, unemployment benefits, workers' compensation benefits, and earnings for the debtor's personal services rendered within the last 60 days.

(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 (4) of subsection (a) of this section, the judgment debtor may either file a motion to designate his exemptions with a schedule of assets or may request, in writing, a hearing before the clerk to claim exemptions.
- (2) If the judgment debtor does not file a motion to designate exemptions with a schedule of assets within 20 days after notice of his the debtor's rights was

served in accordance with ~~G.S. 1C-1603(a)(4)~~ subdivision (4) of subsection (a) of this section, or if ~~he~~ the debtor does not request a hearing before the clerk within 20 days after service of the notice of rights and appear at the requested hearing, the judgment debtor has waived the exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina Constitution. Upon request of the judgment creditor, the clerk ~~shall~~ must issue a writ of execution or writ of possession.

- (3) If the judgment debtor moves to designate ~~his~~ exemptions by filing a motion and schedule of assets, the judgment creditor ~~is~~ must be served as provided in ~~G.S. 1C-1603(d)~~ subsection (d) of this section.
- (4) If the judgment debtor requests a hearing before the clerk to claim exemptions, the clerk ~~sets~~ must set a hearing date and ~~gives~~ give notice of the hearing to the judgment debtor and judgment creditor. At the hearing, the judgment debtor may claim ~~his~~ the debtor's exemptions.
- (5) The judgment creditor has 10 days from the date served with a motion and schedule of assets or from the date of a hearing to claim exemptions to file an objection to the judgment debtor's schedule of exemptions.
- (6) If the judgment creditor files no objection to the schedule filed by the judgment debtor or claimed at the requested hearing, the clerk ~~shall~~ must enter an order designating the property allowed by law and scheduled by the judgment debtor as exempt property. Upon request of the judgment creditor, the clerk ~~shall~~ must issue an execution or writ of possession except for exempt property.
- (7) If the judgment creditor objects to the schedule filed or claimed by the judgment debtor, the clerk must place the motion for hearing by the district court judge, without a jury, at the next civil session.
- (8) The district court judge must determine the value of the property. The district court judge or the clerk, upon order of the judge, may appoint a qualified person to examine the property and report its value to the judge. Compensation of that person must be advanced by the person requesting the valuation and is a court cost having priority over the claims.
- (9) The district court judge must enter an order designating exempt property. Supplemental reports and orders may be filed and entered as necessary to implement the order.
- (10) Where the order designating exemptions indicates excess value in exempt property, the clerk, in an execution, may order the sale of property having excess value and appropriate distribution of the proceeds.
- (11) The clerk or district court judge may permit a particular item of property having value in excess of the allowable exemption to be retained by the judgment debtor upon ~~his~~ the debtor's making available to judgment creditors money or property not otherwise available to them in an amount equivalent to the excess value. Priorities of judgment creditors are the same in the substituted property as they were in the original property.
- (12) Appeal from a designation of exempt property by the clerk is to the district court judge. A party has 10 days from the date of entry of an order to appeal. Appeal from a designation of exempt property by a district court judge is to the Court of Appeals. Decisions of the Court of Appeals with regard to questions of valuation of property are final as provided in G.S. 7A-28. Other questions may be appealed as provided in G.S. 7A-30 and 7A-31.

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

transcript must enter the notation of designation of exempt property as well as docket the judgment.

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

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

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

PART IV. CLARIFY TIME FRAME FOR SUBSTITUTION OF PERSONAL REPRESENTATIVE

SECTION 4.1. G.S. 28A-19-1(c) reads as rewritten:

"(c) In an action pending against the decedent at the time of the decedent's death, which action survives at law, the court may order the substitution of the personal representative or collector for the decedent on motion therefor and that motion will constitute the presentation of a claim, provided that substitution occurs within the time specified for the presentation of claims under G.S. 28A-19-3, any claim pending in the action, provided that the substitution or a motion for substitution is made within the time specified for the presentation of claims under G.S. 28A-19-3, and no further presentation is necessary. Such claim will be deemed to have been presented from the time of the substitution, or motion therefor. Neither the timely substitution of the personal representative nor timely motion therefor as provided in this subsection extends the time for filing additional claims."

PART V. CLARIFY THAT COMMON LAW RULE AGAINST ACCUMULATIONS NO LONGER APPLIES TO TRUSTS

SECTION 5.1. G.S. 41-23(h) reads as rewritten:

"(h) The provisions of G.S. 41-15 and G.S. 41-15, the common law rule against perpetuities perpetuities, and the common law rule against accumulations do not apply to trusts created or administered in this State."

PART VI. ALLOW VIDEOCONFERENCING BETWEEN A TREATMENT FACILITY AND A COURTROOM IN INPATIENT COMMITMENT HEARINGS

SECTION 6.1. G.S. 122C-268(g) reads as rewritten:

"(g) Hearings may be held in an appropriate room not used for treatment of clients at the facility in which the respondent is being treated if it is located within the judge's district court district as defined in G.S. 7A-133 G.S. 7A-133, by interactive videoconferencing between a treatment facility and a courtroom, or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available."

PART VII. EFFECTIVE DATE

SECTION 7.1. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 2014.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Presiding Officer of the House of Representatives

s/ Pat McCrory
Governor

Approved 5:07 p.m. this 6th day of August, 2014