

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 736
Committee Substitute Favorable 7/10/19
Committee Substitute #2 Favorable 7/23/19
Senate Judiciary Committee Substitute Adopted 6/16/20

Short Title: Elective Share-Joint Accounts.

(Public)

Sponsors:

Referred to:

April 15, 2019

A BILL TO BE ENTITLED

AN ACT TO LIMIT SPOUSAL SHARE WITH RESPECT TO JOINTLY HELD PROPERTY TO A REBUTTABLE PRESUMPTION OF IN-KIND CONTRIBUTION UNLESS OTHERWISE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE AND TO REQUIRE A FEE FOR FILING A CLAIM FOR AN ELECTIVE SHARE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 30-3.2 reads as rewritten:

"§ 30-3.2. Definitions.

The following definitions apply in this Article:

...

(3f) Total assets. – The sum of the values, as determined pursuant to G.S. 30-3.3A, of the following:

- a. The decedent's property that would pass by intestate succession if the decedent died without a will, other than wrongful death proceeds;
- b. Property over which the decedent, immediately before death, held a presently exercisable general power of appointment, except for (i) property held jointly with right of survivorship, which is includable in total assets only to the extent provided in sub-subdivision c. of this subdivision and (ii) life insurance, which is includable in Total Assets only to the extent provided in sub-subdivision d. of this subdivision. Includes, without limitation:
 1. Property held in a trust that the decedent could revoke.
 2. Property held in a trust to the extent that the decedent had an unrestricted power to withdraw the property.
 3. Property held in a depository account owned by the decedent in a financial institution payable or transferable at decedent's death to a beneficiary designated by the decedent.
 4. Securities owned by the decedent in an account or in certificated form that are payable or transferable at decedent's death to a beneficiary designated by the decedent.
- c. Property held as tenants by the entirety or jointly with right of survivorship as follows:
 1. One-half of any property held by the decedent and the surviving spouse as tenants by the ~~entirety or as joint tenants~~



- 1 with right of survivorship is included, without regard to who
2 contributed the property.~~entirety.~~
- 3 2. Property held by the decedent and one or more other persons
4 ~~other than the surviving spouse~~ as joint tenants with right of
5 survivorship is included to the following extent:
- 6 I. ~~All property attributable to the decedent's contribution.~~
7 II. ~~The extent of the~~ decedent's pro rata share of property
8 ~~not~~ attributable to the decedent's ~~contribution~~, except to
9 the extent of property attributable to contributions by a
10 ~~surviving joint tenant.~~~~contribution.~~
- 11 The decedent ~~is and~~ all other joint tenants are presumed to have
12 contributed in-kind in accordance with their respective shares
13 for the jointly owned property unless contribution by another
14 is otherwise proven by clear and convincing evidence.
- 15 d. Benefits payable by reason of the decedent's death under any policy,
16 plan, contract, or other arrangement, either owned by the decedent or
17 over which the decedent had a general power of appointment or had
18 the power to designate the surviving spouse as beneficiary, including,
19 without limitation:
- 20 1. Insurance on the life of the decedent.
21 2. Accidental death benefits.
22 3. Annuities.
23 4. Employee benefits or similar arrangements.
24 5. Individual retirement accounts.
25 6. Pension or profit sharing plans.
26 7. Deferred compensation.
27 8. Any private or governmental retirement plan.
- 28 e. Property irrevocably transferred by the decedent to the extent the
29 decedent retained the possession or enjoyment of, or the right to
30 income from, the property for life or for any period not ascertainable
31 without reference to the decedent's death or for any period that does
32 not in fact end before the decedent's death, except:
- 33 1. Property transferred for full and adequate consideration.
34 2. Transfers to that the surviving spouse consented in writing by
35 signing a deed, an income or gift tax return that reports the gift,
36 or other writing.
37 3. Transfers that became irrevocable before the decedent's
38 marriage to the surviving spouse.
- 39 The property included in total assets is that fraction of the transferred
40 property to which the decedent retained the right.
- 41 f. Property transferred by the decedent to the extent the decedent created
42 a power over the property or the income from the property, which,
43 immediately prior to death, could be exercised by the decedent in
44 conjunction with any other person, or which could be exercised by a
45 person who does not have a substantial interest that would be adversely
46 affected by the exercise or nonexercise of the power, for the benefit of
47 the decedent, the decedent's estate, the decedent's creditors, or the
48 creditors of the decedent's estate, except:
- 49 1. Property transferred for full and adequate consideration.

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- 2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
- 3. Transfers which became irrevocable before the decedent's marriage to the surviving spouse.

The property included in total assets with respect to a power over property is that fraction of the property to which the power related.

g. Property transferred by the decedent to persons other than the surviving spouse if such transfer was made both during the one-year period immediately preceding the decedent's death and during the decedent's marriage to the surviving spouse, except:

- 1. Property transferred for full and adequate consideration.
- 2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports such gift, or other writing.
- 3. That part of any property transferred to any one transferee that qualified for exclusion from gift tax under section 2503 of the Code.

For purposes of this sub-subdivision, the termination of a right or interest in, or power over, property that would have been included in the total assets under sub-subdivisions b., e., or f. of this subdivision if the right, interest, or power had not terminated until the decedent's death shall be deemed to be a transfer of such property. Termination occurs when, with respect to a right or interest in property, the decedent transfers or relinquishes the right or interest; with respect to a power over property, the power terminates by exercise or release, but not by lapse or default.

If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.

(4) Total Net Assets. – The total assets reduced by year's allowances to persons other than the surviving spouse and claims."

SECTION 2. G.S. 30-3.4 reads as rewritten:

"§ 30-3.4. Procedure for determining the elective share.

...

(e1) Procedure. – An elective share proceeding shall be an estate proceeding and shall be conducted in accordance with the procedures of Article 2 of Chapter 28A of the General Statutes. The petition shall be filed by the clerk upon payment of the costs assessed in G.S. 7A-307.

...."

SECTION 3. G.S. 7A-307 reads as rewritten:

"§ 7A-307. Costs in administration of estates.

(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, in the administration of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36C-2-203, in estate proceedings under G.S. 28A-2-4, in power of attorney proceedings under G.S. 32C-1-116(a), and in collections of personal property by affidavit, the following costs shall be assessed:

...

(5) For the filing of a caveat to a will, the clerk shall assess for support of the General Court of Justice, the sum of two hundred dollars (\$200.00).

...

1 (7) For the filing of a petition for an elective share proceeding, the clerk shall
2 assess for support of the General Court of Justice, the sum of two hundred
3 dollars (\$200.00).

4 "

5 **SECTION 4.** Section 1 of this act is effective when it becomes law and applies to
6 estates of decedents dying on or after that date and applies to estate proceedings to determine the
7 elective share which are not final on that date because the proceeding is subject to further judicial
8 review. Section 2 and Section 3 of this act become effective December 1, 2020, and apply to
9 estates of decedents dying on or after that date. The remainder of this act is effective when it
10 becomes law.