

NORTH CAROLINA GENERAL ASSEMBLY
1961 SESSION

CHAPTER 959
SENATE BILL 237

1 AN ACT TO AMEND CHAPTER 30 OF THE GENERAL STATUTES RELATING TO
2 SURVIVING SPOUSES.

3
4 The General Assembly of North Carolina do enact:

5 **Section 1.** G.S. 30-1, as the same presently appears in the 1959 Cumulative
6 Supplement of Recompiled Volume 2A of the General Statutes of North Carolina, is hereby
7 rewritten to read as follows:

8 "**§ 30-1. Right of dissent.** (a) A spouse may dissent from his deceased spouse's will in those
9 cases where the aggregate value of the provisions under the will for benefit of the surviving
10 spouse, when added to the value of the property or interests in property passing in any manner
11 outside the will to the surviving spouse as a result of the death of the testator:

- 12 (1) is less than the intestate share of such spouse, or
13 (2) is less than one-half of the deceased spouse's net estate in those cases where
14 the deceased spouse is not survived by a child, children, or any lineal
15 descendant of a deceased child or children, or by a parent.

16 "(b) For the purpose of subsection (a) of this Section and by way of illustration and not
17 of limitation, the following shall, subject to the exception hereinafter set forth, be included in
18 the computation of the value of the property or interests in property passing to the surviving
19 spouse as a result of the death of the testator:

- 20 (1) The value of a legal or equitable life estate for the life of the surviving
21 spouse;
22 (2) The value of the proceeds of an annuity for the life of the surviving spouse;
23 (3) The value of proceeds of insurance policies on the life of the decedent
24 received by the spouse;
25 (4) The value of any property passing by survivorship, including real property
26 owned by the decedent and surviving spouse as tenants by the entirety;
27 (5) The value of the principal of a trust under the terms of which the surviving
28 spouse holds a general power of appointment over the principal of the trust
29 estate;

30 except that no property or interest in property shall be so included to the extent that the
31 surviving spouse or another in his behalf either gave or donated it or paid or contributed to its
32 purchase price.

33 "(c) For the purpose of establishing the right of dissent, the estate of the deceased spouse
34 and the property passing outside of the will to the surviving spouse as a result of the death of
35 the testator shall be determined and valued as of the date of his death, which determination and
36 value the executor or administrator with the will annexed and the surviving spouse are hereby
37 authorized to establish by agreement subject to approval by the Clerk of the Superior Court. If
38 such personal representative and the surviving spouse do not so agree upon the determination
39 and value, or if the surviving spouse is the personal representative, or if the clerk shall be of the
40 opinion that the personal representative may not be able to represent the estate adversely to the
41 surviving spouse, the clerk shall appoint one or more disinterested persons to make such
42 determination and establish such value. Such determination and establishment of value made as

1 herein authorized shall be final for determining the right of dissent and shall be used
2 exclusively for this purpose."

3 **Sec 2.** G.S. 30-2, as the same presently appears in the 1959 Cumulative Supplement
4 of Recompiled Volume 2A of the General Statutes of North Carolina, is hereby rewritten to
5 read as follows:

6 "**§ 30-2. Time and manner of dissent.** (a) Any person entitled under the provisions of
7 G.S. 30-1 to dissent from the will of his or her deceased spouse, may do so by filing such
8 dissent with the Clerk of the Super or Court of the county in which the will is probated, at any
9 time within six months after the issuance of letters testamentary or of administration with the
10 will annexed, or if litigation that affects the share of the surviving spouse is pending at the
11 expiration of the time allowed for filing the dissent, then within such reasonable time as may be
12 allowed by written order of the Clerk of the Superior Court.

13 (b) The dissent shall be in writing signed and acknowledged by the surviving spouse or
14 his or her duly authorized attorney; provided, however, if the surviving spouse is a minor or an
15 incompetent, the dissent may be executed and filed by the general guardian, or by the guardian
16 of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse
17 has no guardian, the dissent may be executed and filed by a next friend appointed by the Clerk
18 of the Superior Court of the county in which the will is probated.

19 (c) The dissent, whether in person or by attorney, shall be filed as a record of the court.

20 (d) If no dissent is filed in the manner and within the time provided for in subsections
21 (a), (b) and (c) of this Section the surviving spouse shall be deemed to have waived his or her
22 right to dissent."

23 **Sec. 3.** G.S. 30-3, as the same presently appears in the 1959 Cumulative
24 Supplement of Recompiled Volume 2A of the General Statutes of North Carolina, is hereby
25 amended by striking out that portion appearing after the semicolon in line 4 of subsection (a)
26 thereof, and inserting in lieu thereof the following:

27 "provided, that if the deceased spouse is not survived by a child, children, or any lineal
28 descendants of a deceased child or children, or by a parent, the surviving spouse shall receive
29 only one-half of the deceased spouse's net estate as defined in G.S. 29-2(3), which one-half
30 shall be estimated and determined before any Federal estate tax is deducted or paid and shall be
31 free and clear of such tax."

32 **Sec. 4.** All laws and clauses of laws in conflict with this Act are hereby repealed.

33 **Sec. 5.** This Act shall become effective July 1, 1961.

34 In the General Assembly read three times and ratified, this the 17th day of June,
35 1961.