

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 846*

Short Title: Passing Title by Will.

(Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

May 22, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY, MODIFY, AND CONSOLIDATE THE LAW APPLICABLE TO
3 THE PASSING OF TITLE TO INTERESTS IN REAL AND PERSONAL PROPERTY
4 DEVISED BY A WILL AND THE RIGHTS OF LIEN CREDITORS AND
5 PURCHASERS FOR VALUE, AS RECOMMENDED BY THE GENERAL STATUTES
6 COMMISSION.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 28A-2A-1 reads as rewritten:

9 **"§ 28A-2A-1. Executor may apply for probate.**

10 Any executor named in a will may, at any time after the death of the testator, apply to the
11 clerk of the superior court, having jurisdiction, to have the ~~same will~~ admitted to probate. ~~Such~~
12 ~~will shall not be valid or effective to pass real estate or personal property as against innocent~~
13 ~~purchasers for value and without notice, unless it is probated or offered for probate within two~~
14 ~~years after the death of the testator or devisor or prior to the time of approval of the final~~
15 ~~account of a duly appointed administrator of the estate of the deceased, whichever time is~~
16 ~~earlier. If such will is fraudulently suppressed, stolen or destroyed, or has been lost, and an~~
17 ~~action or proceeding shall be commenced within two years from the death of the testator or~~
18 ~~devisor to obtain said will or establish the same as provided by law, then the limitation herein~~
19 ~~set out shall only begin to run from the termination of said action or proceeding, but not~~
20 ~~otherwise."~~

21 **SECTION 2.** G.S. 31-39 reads as rewritten:

22 **"§ 31-39. Probate necessary to pass title; rights of lien creditors and purchasers;**
23 **recordation in county where land lies; rights of innocent purchasers.**
24 **real**
25 **property lies.**

26 ~~No will shall be effectual to pass real or personal estate unless it shall have been duly~~
27 ~~proved and allowed in the probate court of the proper county, and a duly certified copy thereof~~
28 ~~shall be recorded in the office of the superior court clerk of the county wherein the land is~~
29 ~~situate, and the probate of a will devising real estate shall be conclusive as to the execution~~
30 ~~thereof against the heirs and devisees of the testator, whenever the probate thereof under the~~
31 ~~like circumstances, would be conclusive against the next of kin and legatees of the testator:~~
32 ~~Provided, that the probate and registration of any will shall not affect the rights of innocent~~
33 ~~purchasers for value from the heirs at law of the testator when such purchase is made more than~~
34 ~~two years after the death of such testator or when such purchase is made after the filing of the~~
35 ~~final account by the duly authorized administrator of the decedent and the approval thereof by~~
36 ~~the clerk of the superior court having jurisdiction of the estate. Such conveyances, if made~~
~~before the expiration of the time required by this section to have elapsed in order for same to be~~



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1 ~~valid against the heirs and devisees of the testator, shall, upon the expiration of such time,~~
2 ~~become good and valid to the same effect as if made after the expiration of such time, unless in~~
3 ~~the meantime a proceeding shall have been instituted in the proper court to probate the will of~~
4 ~~the testator.~~

5 (a) A duly probated will is effective to pass title to real and personal property.

6 (b) A will is not effective to pass title to real or personal property as against lien
7 creditors or purchasers for valuable consideration from the intestate heirs at law of a decedent,
8 unless the will is probated or offered for probate before the earlier of (i) the date of the approval
9 by the clerk of the superior court having jurisdiction of the decedent's estate of the final account
10 filed by the personal representative of the decedent's estate, or (ii) the date that is two years
11 from the date of death of the decedent. If the will is fraudulently suppressed, stolen, or
12 destroyed, or is lost, and an action or proceeding is instituted within the time limitation set forth
13 in this subsection to obtain that will or establish that will as provided by law, the time limitation
14 under this subsection begins to run from the termination of that action or proceeding.

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

20 (d) A conveyance made by the intestate heirs at law of a decedent before the expiration
21 of the time limitation set forth in subsection (b) of this section shall, upon the expiration of that
22 time, become effective to the same extent as if the conveyance were made after the expiration
23 of that time, unless before the expiration of that time, a proceeding is instituted in the proper
24 court to probate a will of the decedent."

25 **SECTION 3.** This act is effective when it becomes law and applies to estates of
26 decedents dying on or after that date.