

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

2

SENATE BILL 902
House Committee Substitute Favorable 7/14/89

Short Title: Estates/Renunciation Amendments.

(Public)

Sponsors:

Referred to:

April 17, 1989

A BILL TO BE ENTITLED
AN ACT TO AMEND CHAPTER 31B OF THE GENERAL STATUTES
REGARDING RENUNCIATION OF PROPERTY AND RENUNCIATION OF
FIDUCIARY POWERS.

The General Assembly of North Carolina enacts:

Section 1. The title of Chapter 31B of the General Statutes reads as rewritten:

"CHAPTER 31B.

**"RENUNCIATION OF TRANSFERS BY WILL, INTESTACY,
APPOINTMENT OR INSURANCE CONTRACT ACT. PROPERTY AND
RENUNCIATION OF FIDUCIARY POWERS ACT."**

Sec. 2. G.S. 31B-1(a) reads as rewritten:

"(a) A person who succeeds to a property interest as:

- (1) Heir, or
- (2) Next of kin, or
- (3) Devisee, or
- (4) Legatee, or
- (5) Beneficiary of a life insurance policy who did not possess the incidents of ownership under the policy at the time of death of the insured, or
- (6) Person succeeding to a renounced interest, or
- (7) Beneficiary under a testamentary trust or under an **inter vivos** trust ~~which takes under a will, trust, or~~
- (8) Appointee under a power of appointment exercised by a testamentary ~~instrument, instrument or a nontestamentary instrument, or~~

1 (9) ~~The duly authorized or appointed guardian with the prior or~~
2 ~~subsequent approval by the clerk of superior court, or by the resident~~
3 ~~judge of the superior court of any of the above, or~~
4 (9a) Surviving joint tenant, surviving tenant by the entireties, or surviving
5 tenant of a tenancy with a right of survivorship, or
6 (9b) Person entitled to share in a testator's estate under the provisions of
7 G.S. 31-5.5, or
8 (9c) Beneficiary under any other testamentary or nontestamentary
9 instrument, including a beneficiary under:
10 a. Any qualified or nonqualified deferred compensation, employee
11 benefit, retirement or death benefit, plan, fund, annuity,
12 contract, policy, program or instrument, either funded or
13 unfunded, which is established or maintained to provide
14 retirement income or death benefits or results in, or is intended
15 to result in, deferral of income;
16 b. An individual retirement account or individual retirement
17 annuity; or
18 c. Any annuity, payable on death, account, or other right to death
19 benefits arising under contract; or
20 (9d) The duly authorized or appointed guardian with the prior or
21 subsequent approval of the clerk of superior court, or of the resident
22 judge of the superior court, of any of the above.
23 (10) The personal representative appointed under Chapter 28A of any of the
24 above,
25 or the attorney-in-fact of any of the above may renounce in whole or in part the right of
26 succession to any property or interest therein, including a future interest, by filing a
27 written instrument under the provisions of this Chapter. A renunciation may be of a
28 fractional share or any limited interest or estate. Provided, however, there shall be no
29 right of partial renunciation if the decedent or donee of the power expressly so provided
30 in the instrument creating the interest."

31 Sec. 3. Chapter 31B of the General Statutes is amended by adding a new
32 section to read:

33 **"§ 31B-1A. Right to renounce fiduciary powers.**

34 (a) Except as otherwise provided in the testamentary or nontestamentary
35 instrument, a fiduciary under a testamentary or nontestamentary instrument may
36 renounce, in whole or in part, fiduciary rights, privileges, powers, and immunities by
37 executing and by delivering, filing, or recording a written renunciation pursuant to the
38 provisions of G.S. 31B-2. A fiduciary may not renounce the rights of beneficiaries
39 unless the instrument creating the fiduciary relationship authorizes such a renunciation.

40 (b) The instrument of renunciation shall (i) describe any fiduciary right, power,
41 privilege, or immunity renounced, (ii) declare the renunciation and the extent thereof,
42 and (iii) be signed and acknowledged by the fiduciary authorized to renounce."

43 Sec. 4. G.S. 31B-2 reads as rewritten:

44 **"§ 31B-2. Time and place of filing renunciation.**

1 (a) An instrument renouncing a present interest shall be filed within the time
2 period required under the applicable federal statute for a renunciation to be given effect
3 for federal estate tax purposes. If there is no such federal statute the instrument shall be
4 filed not later than ~~seven~~nine months after the death of the decedent or donee of the
5 power.

6 (b) An instrument renouncing a future interest shall be filed not later than six
7 months after the event by which the taker of the property or interest is finally
8 ascertained and his interest indefeasibly vested and he is entitled to possession.

9 (c) The renunciation shall be filed with the clerk of court of the county in which
10 proceedings have been commenced for the administration of the estate of the deceased
11 owner or deceased donee of the power or, if they have not been commenced, in which
12 they could be commenced. A copy of the renunciation shall be delivered in person or
13 mailed by registered or certified mail to any personal representative, or other fiduciary
14 of the decedent or donee of the power. If the property interest renounced includes any
15 proceeds of a life insurance policy being renounced pursuant to G.S. 31B-1(a)(5) the
16 person renouncing shall mail, by registered or certified mail, a copy of the renunciation
17 to the insurance company issuing the policy. If the property or property interest
18 renounced is created by nontestamentary instrument, a copy of the renunciation shall be
19 delivered in person, or mailed by registered or certified mail, to the trustee or other
20 person who has legal title to, or possession of, the property or property interest
21 renounced.

22 (d) If real property or an interest therein is renounced, a copy of the renunciation
23 shall also be filed for recording in the office of the register of deeds of all counties
24 wherein any part of the interest renounced is situated. The renunciation shall be indexed
25 in the grantor's index under (i) the name of the deceased owner or donee of the power,
26 and (ii) the name of the person renouncing. The renunciation of an interest, or a part
27 thereof, in real property shall not be effective to renounce such interest until a copy of
28 the renunciation is filed for recording in the office of the register of deeds in the county
29 wherein such interest or part thereof is situated. A spouse of a person renouncing real
30 property or an interest in real property shall have no statutory dower, inchoate marital
31 rights, or any other interest in the real property or real property interest renounced."

32 Sec. 5. G.S. 31B-3(a) reads as rewritten:

33 "(a) Unless the decedent or donee of the power has otherwise provided in the
34 instrument creating the interest, the property or interest renounced devolves as if the
35 renouncer had predeceased the decedent or, if the renouncer is designated to take under
36 a power of appointment exercised by a testamentary instrument, as if the renouncer had
37 predeceased the donee of the ~~power~~power, or, in the case of the renunciation of a
38 fiduciary right, power, privilege, or immunity, as if the fiduciary right, power, privilege,
39 or immunity never existed. A future interest that takes effect in possession or
40 enjoyment after the termination of the estate or interest renounced takes effect as if the
41 renouncer had predeceased the decedent or the donee of the power. A renunciation
42 relates back for all purposes to the date of the death of the decedent or the donee of the
43 power."

44 Sec. 6. G.S. 31B-4 reads as rewritten:

1 **"§ 31B-4. Waiver and bar.**

2 (a) The right to renounce property or an interest therein is barred ~~by~~ by:

3 (1) An assignment, conveyance, encumbrance, pledge, or transfer of the
4 property or interest, or a contract therefor by the person authorized to
5 renounce,

6 (2) A written waiver of the right to renounce,

7 (3) An acceptance of the property or interest or benefit thereunder, or

8 (4) A sale of the property or interest under judicial sale made before the
9 renunciation is effected.

10 (b) The renunciation or the written waiver of the right to renounce is binding
11 upon the renouncer or person waiving and all persons claiming through or under him.

12 (c) A fiduciary's application for appointment or assumption of duties as fiduciary
13 does not waive or bar the fiduciary's right to renounce a right, power, privilege, or
14 immunity.

15 (d) No person shall be liable for distributing or disposing of property in reliance
16 upon the terms of a renunciation that is invalid for the reason that the right of
17 renunciation has been waived or barred, if the distribution or disposition is otherwise
18 proper, and the person has no actual knowledge of the facts that constitute a waiver or
19 bar to the right of renunciation."

20 Sec. 7. G.S. 31B-5 reads as rewritten:

21 **"§ 31B-5. Exclusiveness of remedy.**

22 This Chapter does not exclude or abridge the right of a person ~~any other rights or~~
23 procedures existing under any other statute or otherwise provided by law to waive,
24 release, refuse to accept, disclaim or renounce property or an interest therein ~~under any~~
25 ~~other statute or as otherwise provided by law.~~ therein, or any fiduciary right, power,
26 privilege, or immunity."

27 Sec. 8. This act shall become effective October 1, 1989, and shall apply to
28 any renunciation made on or after that date.