

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 736

Short Title: Elective Share-Joint Accounts. (Public)

Sponsors: Representatives Zachary, Conrad, and Howard (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary, if favorable, Rules, Calendar, and Operations of the House

April 15, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO LIMIT SPOUSAL SHARE WITH RESPECT TO JOINTLY HELD PROPERTY
3 TO A REBUTTABLE PRESUMPTION OF IN-KIND CONTRIBUTION UNLESS
4 OTHERWISE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE.

5 The General Assembly of North Carolina enacts:

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

7 **"§ 30-3.2. Definitions.**

8 The following definitions apply in this Article:

9 (1) Claims. – Includes liabilities of the decedent, whether arising in contract, in
10 tort, or otherwise, and liabilities of the decedent's estate that arise at or after
11 the death of the decedent, including funeral and administrative expenses,
12 except for:

13 a. A claim for equitable distribution of property pursuant to G.S. 50-20
14 awarded subsequent to the death of the decedent.

15 b. Death taxes, except for those death taxes attributable to Property
16 Passing to the Surviving Spouse. "Death taxes attributable to Property
17 Passing to the Surviving Spouse" equals the amount of decedent's
18 death taxes as finally determined, less the amount such death taxes
19 would have been if all Property Passing to the Surviving Spouse had
20 qualified for the federal estate tax marital deduction pursuant to
21 section 2056 of the Code or had qualified for a similar provision under
22 the laws of another applicable taxing jurisdiction.

23 c. A claim founded on a promise or agreement of the decedent, to the
24 extent such claim is not arm's length or is not supported by full or
25 adequate consideration in money or money's worth.

26 d. Expenses apportioned by the clerk of court under G.S. 30-3.4(h).

27 (1a) Code. – The Internal Revenue Code in effect at the time of the decedent's
28 death.

29 (2) Death taxes. – Any estate, inheritance, succession, and similar taxes imposed
30 by any taxing authority, reduced by any applicable credits against those taxes.

31 (2a) General power of appointment. – Any power of appointment, including a
32 power to designate the beneficiary of a beneficiary designation, exercisable
33 by the decedent, regardless of the decedent's capacity to exercise such power,
34 in favor of the decedent, the decedent's estate, the decedent's creditors, or the
35 creditors of the decedent's estate, except for (i) powers limited by an



1 "ascertainable standard" as defined in G.S. 36C-1-103 and (ii) powers which
2 are not exercisable by the decedent except in conjunction with a person who
3 created the power or has a substantial interest in the property subject to the
4 power and whose interest is adverse to the exercise of the power in favor of
5 the decedent, the decedent's estate, the decedent's creditors, or the creditors of
6 the decedent's estate. In no event shall a power held by the decedent as
7 attorney-in-fact under a power of attorney be considered a general power of
8 appointment.

9 (2b) Lineal descendant. – Defined in G.S. 29-2.

10 (2c) Net Property Passing to Surviving Spouse. – The Property Passing to
11 Surviving Spouse reduced by (i) death taxes attributable to property passing
12 to surviving spouse, and (ii) claims payable out of, charged against or
13 otherwise properly allocated to Property Passing to Surviving Spouse.

14 (3) Nonadverse trustee. – Any of the following:

- 15 a. Any person who does not possess a substantial beneficial interest in
16 the trust that would be adversely affected by the exercise or
17 nonexercise of the power that the individual trustee possesses
18 respecting the trust;
- 19 b. Any person subject to a power of removal by the surviving spouse with
20 or without cause; or
- 21 c. Any company authorized to engage in trust business under the laws of
22 this State, or that otherwise meets the requirements to engage in trust
23 business under the laws of this State.

24 (3a) Nonspousal assets. – All property included in total assets other than the
25 property included in Property Passing to Surviving Spouse.

26 (3b) Presently exercisable general power of appointment. – A general power of
27 appointment which is exercisable at the time in question. A testamentary
28 general power of appointment is not presently exercisable.

29 (3c) Property Passing to Surviving Spouse. – The sum of the values, as valued
30 pursuant to G.S. 30-3.3A, of the following:

- 31 a. Property (i) devised, outright or in trust, by the decedent to the
32 surviving spouse or (ii) that passes, outright or in trust, to the surviving
33 spouse by intestacy, beneficiary designation, the exercise or failure to
34 exercise the decedent's testamentary general power of appointment or
35 the decedent's testamentary limited power of appointment, operation
36 of law, or otherwise by reason of the decedent's death, excluding any
37 benefits under the federal social security system.
- 38 b. Any year's allowance awarded to the surviving spouse.
- 39 c. Property renounced by the surviving spouse.
- 40 d. The surviving spouse's interest in any life insurance proceeds on the
41 life of the decedent.
- 42 e. Any interest in property, outright or in trust, transferred from the
43 decedent to the surviving spouse during the lifetime of the decedent
44 for which the surviving spouse signs a statement acknowledging such
45 a gift. For purposes of this sub-subdivision, any gift to the surviving
46 spouse by the decedent of the decedent's interest in any property held
47 by the decedent and the surviving spouse as tenants by the entirety or
48 as joint tenants with right of survivorship shall be deemed to be a gift
49 of one-half of the entire interest in property so held by the decedent
50 and the surviving spouse.

- 1 f. Property awarded to the surviving spouse, subsequent to the death of
 2 the decedent, pursuant to an equitable distribution claim under
 3 G.S. 50-20.
- 4 g. Property held in a spousal trust described in G.S. 30-3.3A(e)(1).
 5 If property falls under more than one sub-subdivision of this subdivision, then
 6 the property shall be included only once, but under the sub-subdivision
 7 yielding the greatest value of the property.
- 8 (3d) Responsible person. – A person or entity other than the surviving spouse that
 9 received, held, or controlled property constituting nonspousal assets on the
 10 date used to determine the value of the property. The personal representative
 11 is the responsible person for nonspousal assets that pass under the decedent's
 12 will or by intestate succession.
- 13 (3e) Responsible person's nonspousal assets. – The nonspousal assets received,
 14 held, or controlled by a responsible person.
- 15 (3f) Total assets. – The sum of the values, as determined pursuant to G.S. 30-3.3A,
 16 of the following:
- 17 a. The decedent's property that would pass by intestate succession if the
 18 decedent died without a will, other than wrongful death proceeds;
- 19 b. Property over which the decedent, immediately before death, held a
 20 presently exercisable general power of appointment, except for (i)
 21 property held jointly with right of survivorship, which is includable in
 22 total assets only to the extent provided in sub-subdivision c. of this
 23 subdivision and (ii) life insurance, which is includable in Total Assets
 24 only to the extent provided in sub-subdivision d. of this subdivision.
 25 Includes, without limitation:
- 26 1. Property held in a trust that the decedent could revoke.
- 27 2. Property held in a trust to the extent that the decedent had an
 28 unrestricted power to withdraw the property.
- 29 3. Property held in a depository account owned by the decedent
 30 in a financial institution payable or transferable at decedent's
 31 death to a beneficiary designated by the decedent.
- 32 4. Securities owned by the decedent in an account or in
 33 certificated form that are payable or transferable at decedent's
 34 death to a beneficiary designated by the decedent.
- 35 c. Property held as tenants by the entirety or jointly with right of
 36 survivorship as follows:
- 37 1. One-half of any property held by the decedent and the
 38 surviving spouse as tenants by the ~~entirety or as joint tenants~~
 39 ~~with right of survivorship is included, without regard to who~~
 40 ~~contributed the property.~~ entirety.
- 41 2. Property held by the decedent and one or more other persons
 42 ~~other than the surviving spouse as joint tenants with right of~~
 43 ~~survivorship is included to the following extent:~~
- 44 I. ~~All property attributable to the decedent's contribution.~~
- 45 II. ~~The extent of the decedent's pro rata share of property not~~
 46 ~~attributable to the decedent's contribution, except to the extent~~
 47 ~~of property attributable to contributions by a surviving joint~~
 48 ~~tenant.~~ contribution. The decedent is and all other joint tenants
 49 are presumed to have contributed in-kind in accordance with
 50 their respective shares for the jointly owned property unless

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

1 2. Transfers to which the surviving spouse consented in writing
2 by signing a deed, an income or gift tax return that reports such
3 gift, or other writing.

4 3. That part of any property transferred to any one transferee that
5 qualified for exclusion from gift tax under section 2503 of the
6 Code.

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

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

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

21 **SECTION 2.** This act is effective when it becomes law and applies to estates of
22 decedents dying on or after that date.