



SENATE BILL 394: Changes to Estates & Trusts Statutes.

2019-2020 General Assembly

Committee:		Date:	June 25, 2019
Introduced by:	Sen. Daniel	Prepared by:	Samantha Yarborough
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: *Senate Bill 394 would make various changes to State laws dealing with estates, trusts, and guardianships.*

[As introduced, this bill was identical to H926, as introduced by Rep. D. Hall, which is currently in House Judiciary.]

CURRENT LAW AND BILL ANALYSIS:

Section 1

G.S. 28A-15-4 sets forth a procedure by which liens, pledges, and security interests that encumber any asset of a decedent's estate may be satisfied. Currently, the law incorrectly refers to payment of "the encumbrance" rather than payment of the underlying debt secured by the encumbrance.

Section 1 of the bill would clarify this procedure by replacing the word "encumbrance" with "underlying debt" and making related conforming changes.

Section 2

G.S. 35A-1103 provides that the clerk of superior court of each county has original jurisdiction over guardianship proceedings. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, codified as Chapter 35B of the General Statutes, was enacted in 2016 with the purpose of providing clear direction to courts, attorneys, guardians, and individuals about the proper jurisdiction for guardianship proceedings. Chapter 35A was not updated with the enactment of Chapter 35B.

Section 2 would update G.S. 35A-1103 to clarify that the clerk's original jurisdiction under Chapter 35A is subject to the rules set forth in Article 2 (Jurisdiction) of Chapter 35B of the General Statutes.

Section 3

The surviving spouse of a decedent spouse is entitled to an allowance for support in the amount of \$60,000 out of the decedent's personal property. G.S. 30-15.

Section 3 would provide that a surviving spouse may claim the allowance under this section if, upon the decedent's death, either spouse was resident of the State.

Section 4

Subchapter II of Chapter 1 of the General Statutes sets forth statutes of limitations for specified causes of action. G.S. 1-56 is a catch-all provision setting a limitations period of 10 years for any action for relief not otherwise limited by Subchapter II.

Section 4 would clarify that, notwithstanding G.S. 1-56, actions may be brought at any time to reform, terminate, or modify a trust under the following circumstances:

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- When a trust is revoked or expires under its terms, no purpose of the trust remains to be achieved, or the trust's purposes have become unlawful, contrary to public policy, or impossible to achieve (G.S. 36C-4-410).
- When modification or termination is by consent (G.S. 36C-4-411).
- When modification or termination would further the trust's purposes because of circumstances unanticipated by the settlor (G.S. 36C-4-412).
- When a trust has become unlawful, impracticable, impossible to achieve, or wasteful (G.S. 36C-4-413).
- When a trust is too small to justify the cost of administration (G.S. 36C-4-414).
- When necessary to correct mistakes (G.S. 36C-4-415).
- When necessary to achieve the settlor's tax objectives (G.S. 36C-4-416).

Section 5

The clerk of superior court has original jurisdiction over all proceedings concerning "the internal affairs of trusts." However, actions to reform, terminate, or modify trusts as provided by G.S. 36C-4-410 through G.S. 36C-4-416 are expressly excluded from this jurisdiction.

Section 5 would clarify that an action seeking to add trust terms to provide for removal and replacement of the trustee by one or more beneficiaries or other persons is an action to reform or modify a trust over which the clerk of superior court does not have jurisdiction.

Section 6

G.S. 36C-4-411 permits modification of a noncharitable irrevocable trust with the consent of all of the beneficiaries if the court determines that its modification is consistent with a material purpose of the trust, and provides that where the modification sought is inconsistent with the trust's material purpose, the trust may be modified if the court determines that the reason for modification substantially outweighs the interest in accomplishing a material interest of the trust.

Section 6 would clarify that this procedure cannot be used to modify a trust to provide for the removal and replacement of a trustee of the trust, including the addition of trust terms to provide for removal and replacement of the trustee by one or more beneficiaries or other persons.

EFFECTIVE DATE: This act is effective when it becomes law. Sections 1, 2, and 3 apply to decedents dying, estates filed, and pleadings filed on or after the date the bill becomes law. Section 4 applies to all trusts created before, on, or after the bill becomes law and all judicial proceedings concerning trusts commenced on or after the bill becomes law. Section 4 also applies to judicial proceedings concerning trusts commenced before the bill becomes law, unless the court finds that application of Section 4 would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of the parties. Sections 5 and 6 apply to trusts created before, on, or after that date, and to pleadings filed on or after that date.

**Brad Krehely and Bill Patterson, Staff Attorneys for the Legislative Analysis Division, substantially contributed to this summary.*