



# SENATE BILL 394: Changes to Estates & Trusts Statutes.

2019-2020 General Assembly

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<b>Committee:</b>		<b>Date:</b>	January 30, 2020
<b>Introduced by:</b>		<b>Prepared by:</b>	Bill Patterson Staff Attorney
<b>Analysis of:</b>	S.L. 2019-113		

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**OVERVIEW:** *Session Law 2019-113 makes various changes to State laws dealing with estates, trusts, and guardianships. For more detailed information about each of these changes, please see the full summary.*

*The act became effective July 11, 2019. For more detailed information about the applicability of each section of the act, please see the full summary.*

## 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 act clarifies 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 updates 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 provides 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.

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

- 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 clarifies 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 clarifies 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 became effective on July 11, 2019. Sections 1, 2, and 3 of the act apply to decedents dying, estates filed, and pleadings filed on or after July 11, 2019. Section 4 applies to all trusts created before, on, or after July 11, 2019, and to all judicial proceedings concerning trusts commenced on or after that date. Section 4 also applies to judicial proceedings concerning trusts commenced before July 11, 2019, 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 July 11, 2019, and to pleadings filed on or after that date.

*\*Brad Krehely and Jessica Sammons, Staff Attorneys for the Legislative Analysis Division, substantially contributed to this summary.*