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The Quill – August 2021



THE QUILL ARTICLE

Limited Estate Procedures

I have been an Underwriting Counsel for almost 15 years now and in all that time, I have never had to pass on the issue of whether the Limited procedures allowed by Article 29 of Chapter 28A of the North Carolina General Statutes are sufficient where the Decedent property owner died less than two years ago. Until recently that is. In the past two months, this particular issue has come up at least four times. Perhaps the Universe is trying to tell me something and perhaps what it is trying to tell me is to tell you. So, here goes. . .

As many of you know, if a Decedent property owner passes less than two years from the date that his Heirs/Devises are trying to sell his or her property, there must be an administration of the Estate and the Notice to Creditors must run at least once before we can insure. This requirement is related to this Statute:

§ 28A-17-12. Sale, lease or mortgage of real property by heirs or devisees.

(a) If the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14-1 occurs within two years after the death of the decedent:

(1) All sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent made after the death of the decedent and before the first publication or posting of the general notice to creditors are void as to creditors and personal representatives; and

(2) All sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent made after such first publication or posting and before approval of the final account shall be void as to creditors and personal representatives unless the personal representative joins in the sale, lease or mortgage.

(b) If the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14-1 does not occur within two years after the death of the decedent, all sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent shall be valid as to creditors and personal representatives of the decedent. (1973, c. 1329, s. 3; 1979, 2nd Sess., c. 1246, s. 1.)

On its face, the statute makes it clear that if the Notice to Creditors runs at least one time (“first publication”) and the conveyance is joined in by the PR, then the conveyance of the property by the heirs or devisees is valid against Creditors. The opposite is also true: If the conveyance by the Heirs or Devisees is made before the first publication or if the conveyance is not joined by the PR, then the conveyance is void as to Creditors.

The question is whether or not the Limited Procedures of Article 29 of Chapter 28A is sufficient to meet that requirement. The short answer is “No.”, but let’s examine why.

Article 29 of Chapter 28A is entitled “Notice to Creditors without Estate Administration”. (The title of the Article kind of gives it away.) The Article describes a process reserved for certain estates. . . typically those with minimal assets. Chapter 28A-29-1 allows for the appointment of a “limited Personal Representative” (hereinafter “PR”). The limited PR may run a Notice to Creditors without an administration of the Estate before the Clerk. The Article permits it’s usage under five circumstances:

- (i) a decedent dies testate or intestate leaving no personal property subject to probate and no real property devised to the personal representative
- (ii) a decedent’s estate is being administered by collection by affidavit pursuant to Article 25 of this Chapter (Chapter 28A);

- (iii) a decedent's estate is being administered under the summary administration provisions of Article 28 of this Chapter (Chapter 28A);
- (iv) a decedent's estate consists solely of a motor vehicle that can be transferred by the procedure authorized by G.S. 20-77(b); or
- (v) a decedent has left assets that may be treated as assets of an estate for limited purposes as described in G.S. 28A-15-10

The key word used in Chapter 28A-29-1 is the word "limited". The PR for this Summary procedure does not have the same status as a PR in a full blown administration. This is made clear in Chapter 28A-29-4 which states:

"At any time after a claim is presented in accordance with the provisions of this section, the clerk may appoint a personal representative to administer the decedent's estate. (2009-444, s. 1.)"

So, if a claim is filed after the Limited PR runs the Notice to Creditors, the Clerk is obligated to appoint a PR to administer the Estate. If that's true, then it must follow that the limited PR is not a PR at all. For this reason, the safeguards that exist relative to a conveyance made pursuant to 28A-17-12 do not exist if the procedures of Article 29 of Chapter 28A are used.

Having said that, the Article 29 procedures are useful because they can be used to bar claims of creditors who do not make claims within the 90 day period stated in the notice to creditors. If the Article 29 procedures are used and no claims are filed within 90 days, then the clerk will close the limited PR estate file. Once the estate file is closed, we can insure without exception for claims of creditors of the estate and without the signature of the PR on the Deed. That can often happen sooner than 2 years after the date of death of the decedent, but will probably take longer than doing a full administration and running the notice to creditors once. So, the Article 29 procedure has some value, but the sellers won't be in a position to close as quickly as they would if they used the procedures pursuant to a full administration.

Like I said at the beginning of this article, this is not an issue I'd seen in 15 years until very recently and I have seen it four times in the last two months. Something's afoot. . .perhaps with the Estate Admin Bar. Make yourself a mental note. As always, these articles are never intended to replace you asking us specific questions, which is always encouraged.

sb

MEET THE FAMILY

{Lindsey Hoeflerlin}



We would like to introduce, or re-introduce to you, one of our newest team members, Lindsey Hoeflerlin (formerly Lindsey Stegall). If you have been around long enough you may remember that after the birth of her third child, Lindsey left us to stay home with her babies. Lucky for us, she has decided to come back!

We couldn't be happier about having Lindsey as part of the team again. So when you see an email come through from her make sure to welcome her back.

In proper Barristers Title fashion we like to share interesting facts about all of our team members on our [website](#). A fun fact you may not know about Lindsey is that she writes left handed but uses her right hand to cut, throw and do everything else. Welcome back Lindsey!

GET TO KNOW LANDIS SINNETT

{A Day In The Life Edition}

1. Favorite breakfast food? ***“Just Egg” wrap with spinach, cheese, & tomatoes.***
2. Coffee vs. Tea? ***Coffee.***
3. Do you prefer working from home or in an office? ***Home.***
4. Dinner at the table or on the couch? ***Kitchen Island.***
5. What is your favorite dessert? ***Dark chocolate with caramel and sea salt.***
6. What are you currently watching? ***Ted Lasso.***
7. If you had one free hour in your day what would you do? ***Learn Portuguese.***
8. Are you a morning person or night owl? ***Night owl.***
9. What is your bedtime? ***11pm.***
10. Tell us an interesting fact about you that we may not know. ***I'm a vegetarian.***



READY OR NOT!

It's back to school time again.



THE QUILL RIDDLE



Q: How did the music teacher get locked in the classroom?

A: His keys were inside the piano.

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