

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1954

Short Title: Winston-Salem/Estate Assets.

(Local)

Sponsors: Representatives Gray; Decker, Esposito, Kennedy, Oldham, and Sexton.

Referred to: Judiciary II.

June 1, 1994

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW PERSONAL REPRESENTATIVES OF ESTATES IN THE
2 CITY OF WINSTON-SALEM TO EXPEND ESTATE ASSETS TO PREVENT
3 THE WASTE OF REAL PROPERTY BELONGING TO THE ESTATE.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 28A-13-3 reads as rewritten:

7 "**§ 28A-13-3. Powers of a personal representative or fiduciary.**

8 (a) Except as qualified by express limitations imposed in a will of the decedent
9 or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of
10 joint personal representatives, a personal representative has the power to perform in a
11 reasonable and prudent manner every act which a reasonable and prudent man would
12 perform incident to the collection, preservation, liquidation or distribution of a
13 decedent's estate so as to accomplish the desired result of settling and distributing the
14 decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law,
15 including but not limited to the powers specified in the following subdivisions:

16 (1) To take possession, custody or control of the personal property of the
17 decedent. If in the opinion of the personal representative his
18 possession, custody or control of such property is not necessary for
19 purposes of administration, such property may be left with or
20 surrendered to the heir or devisee presumptively entitled thereto. He
21 has the power to take possession, custody or control of the real
22 property of the decedent if he determines such possession, custody or
23 control is in the best interest of the administration of the estate. Prior to
24 exercising such power over real property the procedure as set out in

1 subsection G.S. 28A-13-3(c) shall be followed. If the personal
2 representative determines that such possession, custody or control is
3 not in the best interest of the administration of the estate such property
4 may be left with or surrendered to the heir or devisee presumptively
5 entitled thereto.

6 (2) To retain assets owned by the decedent pending distribution or
7 liquidation even though such assets may include items which are
8 otherwise improper for investment of trust funds.

9 (3) To receive assets from other fiduciaries or other sources.

10 (4) To complete performance of contracts entered into by the decedent
11 that continue as obligations of his estate, or to refuse to complete such
12 contracts, as the personal representative may determine to be in the
13 best interests of the estate, but such refusal shall not limit any cause of
14 action which might have been maintained against decedent if he had
15 refused to complete such contract. In respect to enforceable contracts
16 by the decedent to convey an interest in land, the provisions of G.S.
17 28A-17-9 are controlling.

18 (5) To deposit, as a fiduciary, funds of the estate in a bank, including a
19 bank operated by the personal representative upon compliance with the
20 provisions of G.S. 36A-63.

21 (6) To make, as a fiduciary, any form of investment allowed by law to the
22 State Treasurer under G.S. 147-69.1, with funds of the estate, when
23 such are not needed to meet debts and expenses immediately payable
24 and are not immediately distributable, including money received from
25 the sale of other assets; or to enter into other short-term loan
26 arrangements that may be appropriate for use by trustees or
27 beneficiaries generally. Provided, that in addition to the types of
28 investments hereby authorized, deposits in interest-bearing accounts
29 of any credit union authorized to do business in this State, when such
30 deposits are insured in the same manner as required by G.S. 147-69.1
31 for deposits in a savings and loan association, are hereby authorized.

32 (7) To abandon or relinquish all rights in any property when, in the
33 opinion of the personal representative acting reasonably and in good
34 faith, it is valueless, or is so encumbered or is otherwise in such
35 condition that it is of no benefit to the estate.

36 (8) To vote shares of stock or other securities in person or by general or
37 limited proxy, and to execute waivers, consents or objections with
38 respect to such stock or securities.

39 (9) To pay calls, assessments, and any other sums chargeable or accruing
40 against or on account of securities.

41 (10) To hold shares of stock or other securities in the name of a nominee,
42 without mention of the estate in the instrument representing stock or
43 other securities or in registration records of the issuer thereof;
44 provided, that

- 1 a. The estate records and all reports or accounts rendered by the
2 personal representative clearly show the ownership of the stock
3 or other securities by the personal representative and the facts
4 regarding its holdings, and
5 b. The nominee shall not have possession of the stock or other
6 securities or access thereto except under the immediate
7 supervision of the personal representative or when such
8 securities are deposited by the personal representative in a
9 clearing corporation as defined in G.S. 25-8-102(3).

10 Such personal representative shall be personally liable for any acts
11 or omissions of such nominee in connection with such stock or other
12 securities so held, as if such personal representative had done such acts
13 or been guilty of such omissions.

- 14 (11) To insure, at the expense of the estate, the assets of the estate in his
15 possession, custody or control against damage or loss.
16 (12) To borrow money for such periods of time and upon such terms and
17 conditions as to rates, maturities, renewals, and security as the personal
18 representative shall deem advisable, including the power of a corporate
19 personal representative to borrow from its own banking department,
20 for the purpose of paying debts, taxes, and other claims against the
21 estate, and to mortgage, pledge or otherwise encumber such portion of
22 the estate as may be required to secure such loan or loans. In respect to
23 the borrowing of money on the security of the real property of the
24 decedent, G.S. 28A-17-11 is controlling.
25 (13) To renew obligations of the decedent for the payment of money.
26 (14) To advance his own money for the protection of the estate, and for all
27 expenses, losses and liabilities sustained in the administration of the
28 estate or because of the holding or ownership of any estate assets. For
29 such advances, with any interest, the personal representative shall have
30 a lien on the assets of the estate as against a devisee or heir.
31 (15) To compromise, adjust, arbitrate, sue on or defend, abandon, or
32 otherwise deal with and settle claims in favor of or against the estate.
33 (16) To pay taxes, assessments, his own compensation, and other expenses
34 incident to the collection, care, administration and protection of the
35 assets of the estate in his possession, custody or control. With regard
36 to real property of the estate, the personal representative or public
37 administrator may expend estate assets to prevent waste of the real
38 property by complying with Part 6 of Article 19 of Chapter 160A of
39 the General Statutes, Minimum Housing Standards, or any ordinance
40 or order adopted pursuant to that Part.
41 (17) To sell or exercise stock subscription or conversion rights; consent,
42 directly or through a committee or other agent, to the reorganization,
43 consolidation, merger, dissolution, or liquidation of a corporation or
44 other business enterprise.

- 1 (18) To allocate items of income or expense to either estate income or
2 principal, as permitted or provided by law.
- 3 (19) To employ persons, including attorneys, auditors, investment advisors,
4 appraisers or agents to advise or assist him in the performance of his
5 administrative duties.
- 6 (20) To continue any business or venture in which the decedent was
7 engaged at the date of his death, where such continuation is reasonably
8 necessary or desirable to preserve the value, including goodwill, of the
9 decedent's interest in such business. With respect to the use of the
10 decedent's interest in a continuing partnership, the provisions of G.S.
11 59-71 and 59-72 qualify this power; and with respect to farming
12 operations engaged in by the decedent at the time of his death, the
13 provisions of G.S. 28A-13-4 qualify this power.
- 14 (21) To incorporate or participate in the incorporation of any business or
15 venture in which the decedent was engaged at the time of his death.
- 16 (22) To provide for the exoneration of the personal representative from
17 personal liability in any contract entered into on behalf of the estate.
- 18 (23) To maintain actions for the wrongful death of the decedent according
19 to the provisions of Article 18 of this Chapter and to compromise or
20 settle any such claims, whether in litigation or not, provided that any
21 such settlement shall be subject to the approval of a judge of superior
22 court unless all persons who would be entitled to receive any damages
23 recovered under G.S. 28A-18-2(b)(4) are competent adults and have
24 consented in writing. It shall be the duty of the personal representative
25 in distributing the proceeds of such settlement in any instance to take
26 into consideration and to make a fair allocation to those claimants for
27 funeral, burial, hospital and medical expenses which would have been
28 payable from damages which might have been recovered had a
29 wrongful death action gone to judgment in favor of the plaintiff.
- 30 (24) To maintain any appropriate action or proceeding to recover
31 possession of any property of the decedent, or to determine the title
32 thereto; to recover damages for any injury done prior to the death of
33 the decedent to any of his property; and to recover damages for any
34 injury done subsequent to the death of the decedent to such property.
- 35 (25) To purchase at any public or private sale of any real or personal
36 property belonging to the decedent's estate or securing an obligation of
37 the estate as a fiduciary for the benefit of the estate when, in his
38 opinion, it is necessary to prevent a loss to the estate.
- 39 (26) To sell or lease personal property of the estate in the manner
40 prescribed by the provisions of Article 16 of this Chapter.
- 41 (27) To sell or lease real property of the estate in the manner prescribed by
42 the provisions of Article 17 of this Chapter.
- 43 (28) To enter into agreements with taxing authorities to secure the benefit
44 of the federal marital deduction pursuant to G.S. 28A-22-6.

- 1 (29) To pay or satisfy the debts and claims against the decedent's estate in
2 the order and manner prescribed by Article 19 of this Chapter.
- 3 (30) To distribute any sum recovered for the wrongful death of the decedent
4 according to the provisions of G.S. 28A-18-2; and to distribute all
5 other assets available for distribution according to the provisions of
6 this Chapter or as otherwise lawfully authorized.
- 7 (31) To exercise such additional lawful powers as are conferred upon him
8 by the will.
- 9 (32) To execute and deliver all instruments which will accomplish or
10 facilitate the exercise of the powers vested in the personal
11 representative.
- 12 (33) To renounce in accordance with the provisions of Chapter 31B of the
13 General Statutes."
- 14 Sec. 2. This act applies only to real property located in the City of Winston-
15 Salem.
- 16 Sec. 3. This act is effective upon ratification.