

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 394
Judiciary I Committee Substitute Adopted 4/14/03

Short Title: Equ. Dis. Claim Survive Death Spouse/Limit.

(Public)

Sponsors:

Referred to:

March 12, 2003

A BILL TO BE ENTITLED

AN ACT ALLOWING A CLAIM FOR EQUITABLE DISTRIBUTION TO SURVIVE
THE DEATH OF A SPOUSE WHEN THE PARTIES ARE LIVING SEPARATE
AND APART AT THE TIME OF DEATH AND THE CLAIM IS TIMELY FILED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-20(l) reads as rewritten:

"(l) ~~A pending action for equitable distribution shall not abate upon the death of a party.~~

(1) A claim for equitable distribution, whether an action is filed or not, survives the death of a spouse so long as the parties are living separate and apart at the time of death.

(2) Any claim for equitable distribution against the estate of the deceased spouse made after the death of a party must be filed with the estate of the deceased spouse in accordance with Article 19 of Chapter 28A of the General Statutes, or if no estate administration is opened, an action for equitable distribution must be filed within six months of the date of death.

(3) Any claim for equitable distribution against the surviving spouse made by the estate of the deceased spouse must be filed with the district court within six months of the date of death of the deceased spouse or be forever barred.

(4) The proper forum for disputed claims under this subsection shall be the district court.

(5) An action brought under this subsection shall be an action to determine what constitutes an asset of the deceased spouse's estate and shall constitute a claim of the seventh class under G.S. 28A-19-6."

SECTION 2. The catch line for G.S. 50-20 reads as rewritten:

"§ 50-20. Distribution by court of marital and divisible property upon divorce property."

1 **SECTION 3.** Article 19 of Chapter 28A of the General Statutes is amended
2 by adding a new section to read:

3 **"§ 28A-19-19. Claims for equitable distribution.**

4 (a) The provisions of G.S. 28A-19-5 and G.S. 28A-19-7 shall not apply to claims
5 for equitable distribution.

6 (b) The personal representative may enter into an agreement, in writing, with a
7 claimant providing for distribution of marital or divisible property, or both, in a manner
8 deemed by the personal representative and the claimant to be equitable. The agreement
9 shall be filed in the clerk's office where the letters were granted and shall be a lawful
10 voucher for the personal representative. The same may be impeached in any proceeding
11 against the personal representative for fraud therein.

12 (c) Unless the claim for equitable distribution has been referred as provided in
13 G.S. 28A-19-15, the claimant may at anytime, subject to the provisions of G.S.
14 28A-19-16, file an action with the court for distribution of marital or divisible property
15 in accordance with the provisions of G.S. 50-20."

16 **SECTION 4.** This act is effective when it becomes law and applies to
17 actions pending or filed on or after that date.