

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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SENATE BILL 394  
Judiciary I Committee Substitute Adopted 4/14/03  
House Committee Substitute Favorable 5/13/03

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

(Public)

Sponsors:

Referred to:

March 12, 2003

1 A BILL TO BE ENTITLED  
2 AN ACT ALLOWING A CLAIM FOR EQUITABLE DISTRIBUTION TO SURVIVE  
3 THE DEATH OF A SPOUSE WHEN THE PARTIES ARE LIVING SEPARATE  
4 AND APART AT THE TIME OF DEATH AND THE CLAIM IS TIMELY FILED.

5 The General Assembly of North Carolina enacts:

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

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

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

12 (2) The provisions of Article 19 of Chapter 28A of the General Statutes  
13 shall be applicable to a claim for equitable distribution against the  
14 estate of the deceased spouse.

15 (3) Any claim for equitable distribution against the surviving spouse made  
16 by the estate of the deceased spouse must be filed with the district  
17 court within three years of the date of death of the deceased spouse or  
18 be forever barred."

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

20 "**§ 50-20. Distribution by court of marital and divisible ~~property upon~~**  
21 **~~divoree property.~~"**

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

24 "**§ 28A-19-19. Claims for equitable distribution.**

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

27 (b) The personal representative may enter into an agreement, in writing, with a  
28 claimant providing for distribution of marital or divisible property, or both, in a manner

1 deemed by the personal representative and the claimant to be equitable. The agreement  
2 shall be filed in the clerk's office where the letters were granted and shall be a lawful  
3 voucher for the personal representative. The same may be impeached in any proceeding  
4 against the personal representative for fraud therein.

5 (c) Unless the claim for equitable distribution has been referred as provided in  
6 G.S. 28A-19-15, the claimant may at anytime, subject to the provisions of G.S.  
7 28A-19-16, file an action with the district court for distribution of marital or divisible  
8 property in accordance with the provisions of G.S. 50-20.

9 (d) A claim for equitable distribution shall constitute a claim of the seventh class  
10 under G.S. 28A-19-6."

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