

SPEECH BY ATTORNEY GENERAL ROBERT MORGAN
WINSTON-SALEM ESTATE PLANNING COUNCIL
WINSTON-SALEM, NORTH CAROLINA
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I AM PLEASED TO HAVE THIS OPPORTUNITY TO SPEAK TO THIS GROUP TONIGHT. IT IS NOT OFTEN THAT I AM ABLE TO SPEAK TO A GROUP OF SPECIALISTS IN AN AREA THAT IS BOTH HIGHLY TECHNICAL AND EXTREMELY PRACTICAL. ESTATE PLANNING IS SUCH AN AREA.

TONIGHT I WANT TO TALK ABOUT AN ASPECT OF ESTATE PLANNING THAT YOU MAY NOT CONSIDER AS TRULY A PART OF YOUR ESTATE PLANNING EXPERTISE. I REFER TO THE STATUTORY PROCEDURES GOVERNING THE ADMINISTRATION OF A DECEDENT'S ESTATE. AS I SEE IT, KNOWLEDGE OF THE PROCEDURES WHICH WILL ULTIMATELY BE FOLLOWED IN THE ADMINISTRATION OF YOUR CLIENT'S ESTATE IS ESSENTIAL TO THE DEVELOPMENT OF THE BEST PLAN FOR THE PROTECTION AND DISTRIBUTION OF YOUR CLIENT'S PROPERTY.

WHAT YOU AND I HAVE LEARNED FROM TRAINING AND EXPERIENCE ABOUT THE ADMINISTRATION OF A DECEDENT'S ESTATE IS LIKELY TO BE CHANGED BY THE GENERAL ASSEMBLY THIS YEAR. I BELIEVE THAT CHANGE IS NEEDED; AND, I BELIEVE THAT THE SPECIFIC CHANGES TO BE PROPOSED ARE GOOD ONES. WHEN YOU

HAVE HAD AN OPPORTUNITY TO STUDY THE PROPOSALS, I AM CONFIDENT THEY WILL HAVE YOUR SUPPORT, TOO.

BEFORE I BEGIN TO TELL YOU SOMETHING ABOUT THE REVISION OF THESE PROCEDURES, LET ME TELL YOU ABOUT ITS SOURCE, THE GENERAL STATUTES COMMISSION. OVER THE PAST 30 YEARS, THE GENERAL STATUTES COMMISSION HAS EARNED A REPUTATION FOR UNDERTAKING UNWANTED AND DIFFICULT TASKS OF STATUTORY REVISION AND TURNING OUT FINISHED PRODUCTS THAT BEAR THE BENCHMARKS OF THOROUGH STUDY AND CAREFUL DRAFTING. THIS IS THE COMMISSION WHICH AUTHORED THE INTESTATE SUCCESSION ACT AND THE RULES OF CIVIL PROCEDURE-TO NAME ONLY TWO RECENT REVISIONS WHICH HAVE EARNED THE PRAISE OF LAWYERS AND LAYMEN ALIKE. THE 10 MEMBERS OF THE GENERAL STATUTES COMMISSION ARE LAWYERS. SOME ARE PROFESSORS OF LAW. SOME ARE PRACTITIONERS. SOME ARE LEGISLATORS. ALL ARE APPOINTED FOR 2-YEAR TERMS.

ON LARGE AND COMPLEX REVISION PROJECTS, THE COMMISSION UTILIZES THE SERVICES OF DRAFTING COMMITTEES COMPOSED OF PRACTITIONERS AND PROFESSORS WITH EXPERTISE IN THE AREA UNDERGOING REVISION. STAFF SUPPORT FOR THE COMMISSION COMES FROM THE DEPARTMENT OF JUSTICE WITH ONE OF MY ASSISTANTS, THE REVISOR OF STATUTES, HANDLING ADMINISTRATIVE, RESEARCH AND DRAFTING DUTIES ON A FULL-TIME BASIS.

THIS REVISION OF THE ESTATES STATUTES WAS DRAFTED

BY A SPECIAL DRAFTING COMMITTEE OF EXPERTS AND THEN REVIEWED AND APPROVED ON AN ARTICLE-BY-ARTICLE BASIS BY THE COMMISSION AS A WHOLE. THE TASK HAS CONSUMED SOME EIGHT YEARS. AS YOU CAN SEE, THE REVISION PROCESS DOES NOT LEND ITSELF TO SPEED. IT DOES PRODUCE QUALITY LEGISLATIVE DRAFTING, HOWEVER.

AS ALL OF YOU ARE AWARE, THE PRESENT DECEDENT'S ESTATES STATUTES WERE ENACTED IN THE LAST QUARTER OF THE 19TH CENTURY. WHILE THEY, OF COURSE, WERE DRAWN TO ANTICIPATE THE FUTURE NEEDS AS MUCH AS HUMANLY POSSIBLE, THE CHANGES IN OUR SOCIETY DURING THE LAST 100 YEARS HAVE LEFT THESE PROCEDURES BEHIND. THEY ARE TRULY HORSE-AND-BUGGY PROCEDURES IN THE JET AGE.

THE DELAY AND EXPENSE OF AN ADMINISTRATION, DUE IN PART TO SUCH OUTMODED PROCEDURES, HAS RECENTLY RESULTED IN A PUBLIC CLAMOR IN NORTH CAROLINA AND ACROSS THE NATION FOR REVISION OF THIS AREA OF THE LAW. THE GENERAL STATUTES COMMISSION'S PROPOSAL IS IN RESPONSE TO THIS CLAMOR-BUT IT IS NOT A KNEE-JERK RESPONSE TO PUBLIC PRESSURE. IT IS A SENSIBLE REVISION OF A COMPLEX SERIES OF STATUTES; A CAREFULLY RESEARCHED AND DRAWN PIECE OF LEGISLATION THAT HAS UNDERGONE COUNTLESS MAN-HOURS OF DELIBERATIVE REVIEW. ITS AIM IS TWOFOLD: FIRST, TO RESTRUCTURE CHAPTER 28 OF THE GENERAL STATUTES SO THAT IT WILL BE EASIER TO USE; AND SECOND, TO IMPROVE THE PROCEDURES REQUIRED IN THE ADMINISTRATION

OF ESTATES OF DECEDENTS TO MAKE THE PROCESS QUICKER AND LESS COSTLY.

WHILE IT IS DIFFICULT AT TIMES TO CLASSIFY A PARTICULAR FEATURE OF THIS REVISION AS DESIGNED TO ACHIEVE ONE PURPOSE OR THE OTHER, I WILL TRY TO DISCUSS THE PROPOSAL IN THAT FRAMEWORK.

THE REVISED CHAPTER IS DESIGNATED AS CHAPTER 28A WITH PRESENT CHAPTER 28 BEING REPEALED IN ITS ENTIRETY. THE USE OF AN EXISTING CHAPTER NUMBER WITH AN ALPHABETICAL SUFFIX IS STANDARD PROCEDURE WHEN IT IS DESIRABLE TO PRESERVE THE CASE HISTORY OF THE REPEALED CHAPTER WHILE MINIMIZING CONFUSION OTHERWISE CAUSED BY THE EXISTENCE OF AN "OLD" AND A "NEW" CHAPTER 28. CHAPTER 28A IS CONVENIENTLY DIVIDED INTO 26 ARTICLES EACH WITH A TITLE DESCRIPTIVE OF ITS CONTENTS. THE ARTICLES ARE ARRANGED IN AN ORDER BASED ON A ROUGH CHRONOLOGY OF THE ADMINISTRATION OF AN ESTATE. THAT IS, THE ARTICLES DEALING WITH JURISDICTION AND VENUE ARE NEAR THE FIRST OF THE CHAPTER WHILE THOSE DEALING WITH THE DISTRIBUTION AND SETTLEMENT OF THE ESTATE FALL NEAR THE END. FINALLY, SECTION NUMBERING INDICATES THE ARTICLE IN WHICH THE SECTION APPEARS AND THE RELATIVE POSITION OF THE SECTION WITHIN THAT ARTICLE. FOR EXAMPLE, § 28A-17.3 IS THE THIRD SECTION IN ARTICLE 17.

I'M SURE THAT YOU'VE HAD ENOUGH BACKGROUND AND CODIFICATION TECHNIQUE. WHAT ARE SOME OF THE SUBSTANTIVE

FEATURES OF THIS REVISION?

FIRST, JURISDICTION OF THE PROBATE OF WILLS AND THE ADMINISTRATION OF DECEDENT'S ESTATES REMAINS IN THE CLERK OF SUPERIOR COURT. HOWEVER, THROUGHOUT THE REVISION THE THEME HAS BEEN TO EXPEDITE THE ADMINISTRATION BY GIVING MORE DISCRETION TO THE PERSONAL REPRESENTATIVE AND LESS SUPERVISORY CONTROL TO THE CLERK.

A SERIES OF ARTICLES DEAL WITH ENTITLEMENT TO SERVE AS THE PERSONAL REPRESENTATIVE OF A DECEDENT, PROCEDURES FOR THE RENUNCIATION OF SUCH RIGHTS AND PROCEDURES FOR THE APPOINTMENT OF A PERSONAL REPRESENTATIVE.

THE REVISION REQUIRES ALL PERSONAL REPRESENTATIVES EXCEPT RESIDENT EXECUTORS, NONRESIDENT EXECUTORS HAVING A RESIDENT CO-EXECUTOR AND BANKS TO POST A BOND. THE AMOUNTS AND PROVISIONS OF THE BOND REQUIRED GENERALLY TRACK PRESENT LAW.

SEVERAL ARTICLES PRESCRIBE THE GROUNDS FOR REVOCATION OF LETTERS, AS WELL AS THE PROCEDURES FOR SUCH REVOCATION AND FOR RESIGNATION BY THE PERSONAL REPRESENTATIVE.

MACHINERY IS PROVIDED FOR THE APPOINTMENT OF A COLLECTOR WHEN THERE IS DELAY IN APPOINTING A PERMANENT PERSONAL REPRESENTATIVE. COLLECTORS ARE NOT ENVISIONED AS

SUBSTITUTE PERSONAL REPRESENTATIVES WHO WILL CARRY OUT THE ENTIRE ADMINISTRATION. THEREFORE, THEIR UNSUPERVISED POWERS ARE LIMITED, AND THEY ONLY POSSESS FULL POWERS UNDER THE DIRECTION AND SUPERVISION OF THE CLERK. IT IS HOPED THAT THIS BURDEN OF SUPERVISION WILL CAUSE THE CLERKS TO MAKE MINIMAL, SHORT-TERM USE OF COLLECTORS.

ONE ARTICLE DEALS ENTIRELY WITH THE APPOINTMENT, POWERS, DUTIES AND REMOVAL OF A PUBLIC ADMINISTRATOR. THE REVISION REQUIRES THE APPOINTMENT OF A PUBLIC ADMINISTRATOR IN EVERY COUNTY.

A LENGTHY ARTICLE IS DEVOTED TO A DETAILED LISTING OF THE POWERS, DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVES AND THEIR SUCCESSORS. AMONG THOSE POWERS IS THE POWER TO TAKE POSSESSION, CUSTODY AND CONTROL OF THE REAL PROPERTY, AS WELL AS THE PERSONAL PROPERTY OF THE DECEDENT AND TO SELL OR LEASE SAID PROPERTY FOR THE BENEFIT OF THE ESTATE. THIS LISTING OF POWERS IS EXHAUSTIVE AND IS INTENDED TO HELP THE PERSONAL REPRESENTATIVE BY DEFINING HIS POWERS, DUTIES AND LIABILITIES CLEARLY AND BY MAKING THEM READILY AND EASILY FOUND IN THE LAW.

THE ARTICLE DEALING WITH NOTICE TO CREDITORS REQUIRES THE NOTICE PROCEDURE TO COMMENCE WITHIN 20 DAYS AFTER THE ISSUANCE OF LETTERS TO THE PERSONAL REPRESENTATIVE OR THE APPOINTMENT OF THE COLLECTOR. NOTICE CAN BE GIVEN PERSONALLY OR BY PUBLICATION AND POSTING.

ONE ARTICLE DEALS WITH THE TYPES OF PROPERTY WHICH ARE ASSETS OF AN ESTATE. OF INTEREST IN THIS AREA ARE NEW PROVISIONS WHICH DECLARE THAT REAL AND PERSONAL PROPERTY ARE EQUALLY AVAILABLE FOR SALE TO MAKE ASSETS. THE PERSONAL REPRESENTATIVE NEED NOT EXHAUST THE DECEDENT'S PERSONAL ESTATE BEFORE TURNING TO REAL PROPERTY. UNDER THE REVISION, HE CAN PICK AND CHOOSE WHAT TO SELL BASED ON HIS JUDGMENT OF WHAT WILL MOST BENEFIT THE ESTATE AS A WHOLE. THIS ARTICLE ALSO CONTAINS A PROVISION DOING AWAY WITH THE PRESENT EXONERATION OF ENCUMBERED REAL PROPERTY. IN OTHER WORDS, THE REVISION DOES AWAY WITH THE RIGHT OF A DEVISEE OF ENCUMBERED REAL PROPERTY TO HAVE PERSONAL PROPERTY SOLD TO PAY OFF THE ENCUMBRANCE ON HIS DEVISE.

THE REVISION PERMITS THE PERSONAL REPRESENTATIVE TO SELL OR LEASE PERSONAL PROPERTY OF THE ESTATE WITHOUT A COURT ORDER AND WITHOUT A SPECIAL REPORT TO THE CLERK. ALL THAT IS REQUIRED IS THAT THE RECEIPTS AND DISBURSEMENTS INCIDENT THERETO BE INCLUDED IN THE NEXT ACCOUNTING.

THE SALE OF REAL PROPERTY IS MORE TIGHTLY CONTROLLED. THE PERSONAL REPRESENTATIVE MUST PETITION THE CLERK FOR AN ORDER TO SELL AND THE PROCEDURE ALREADY PRESCRIBED FOR JUDICIAL SALES MUST BE FOLLOWED. HOWEVER, THE DECISION BETWEEN PUBLIC SALE AND PRIVATE SALE IS IN THE HANDS OF THE PERSONAL REPRESENTATIVE.

THE ARTICLE ON ACTIONS AND PROCEEDINGS CONTAINS A REVISION OF THE WRONGFUL DEATH ACT. THE LIBERAL SPIRIT AND THEORY OF THE 1969 REVISION OF THIS STATUTE HAS NOT BEEN CHANGED. THE REVISION HAS BEEN DIRECTED AT IRONING OUT SOME INTERNAL CONFLICTS WHICH CAUSE INEQUITIES IN THE FINAL DISTRIBUTION OF THE PROCEEDS.

CLAIMS AGAINST THE DECEDENT'S ESTATE ARE COVERED IN ARTICLE 19. CLAIMS EXISTING AT DEATH WHICH ARE NOT FILED WITH THE PERSONAL REPRESENTATIVE WITHIN 6 MONTHS OF THE FIRST PUBLICATION OF THE NOTICE TO CREDITORS ARE BARRED ABSOLUTELY. CLAIMS ARISING AFTER DEATH ARE BARRED AFTER 6 MONTHS FROM THE TIME THEY ARISE OR FROM THE TIME PERFORMANCE WAS DUE. IF NOTICE WAS PERSONALLY SERVED ON A CREDITOR, THEN THE CLAIM IS BARRED IF NOT PRESENTED WITHIN 3 MONTHS. THE REVISION ALSO PROVIDES FOR REFERRAL OF DISPUTED CLAIMS TO DISINTERESTED PERSONS FOR ARBITRATION.

AN INVENTORY IS REQUIRED WITHIN 3 MONTHS OF THE QUALIFICATION AND FAILURE TO FILE THIS REPORT, OR TO OBTAIN AN EXTENSION OF TIME TO DO SO, CAN RESULT IN REMOVAL FROM OFFICE.

THE FINAL ACCOUNT IS REQUIRED WITHIN 1 YEAR. HOWEVER, THE PERSONAL REPRESENTATIVE CAN EASILY OBTAIN AN EXTENSION. IF SUCH AN EXTENSION IS OBTAINED, AN ANNUAL ACCOUNT IS REQUIRED WITHIN 30 DAYS AFTER THE EXPIRATION OF THE YEAR.

THE REVISION PERMITS THE FILING OF THE FINAL ACCOUNT AFTER 6 MONTHS IF ALL DEBTS ARE PAID AND THE ESTATE IS READY FOR SETTLEMENT.

THE REVISION PROVIDES GUIDANCE FOR THE PERSONAL REPRESENTATIVE IN MAKING DISTRIBUTION OF THE ESTATE. THE ARTICLE ON SETTLEMENT CONTAINS THE PRESENT FEE SCHEDULE FOR PERSONAL REPRESENTATIVES AND ALSO PROVIDES FOR THE REOPENING OF A SETTLED ESTATE IF NECESSARY.

THE UNIFORM SIMULTANEOUS DEATH ACT IS RETAINED WITH SOME NEEDED TECHNICAL TOUCH-UPS.

FOR THE FIRST TIME, THERE WILL BE A DETAILED TREATMENT OF THE AREA OF FOREIGN PERSONAL REPRESENTATIVES AND ANCILLARY ADMINISTRATIONS. THE PROCEDURES ARE MODERN AND DESIGNED TO FACILITATE ADMINISTRATIONS WHILE PRESERVING THE RIGHTS OF NORTH CAROLINA CITIZENS WITH INTERESTS IN THE PARTICULAR ESTATE.

FINALLY, THE COMMISSION PROPOSES AN INNOVATIVE APPROACH TO A QUICK SETTLEMENT OF INTESTATE ESTATES WITH A NET VALUE OF \$10,000 OR LESS. IT PROVIDES THAT AN HEIR OF THE DECEDENT MAY FILE AN AFFIDAVIT CONTAINING CERTAIN REQUIRED INFORMATION WITH THE CLERK. THEN, USING THE FILED AFFIDAVIT AS HIS CREDENTIALS, HE MAY PROCEED TO COLLECT THE PROPERTY OF HIS DECEDENT. A PERSON DELIVERING PROPERTY OF A DECEDENT TO ONE PRESENTING SUCH AN AFFIDAVIT IS DISCHARGED AND

RELEASED FROM LIABILITY FOR DELIVERY. WHEN THE PROPERTY IS SO COLLECTED, THE AFFIANT DISTRIBUTES THE PROPERTY AS DESCRIBED BY THIS ARTICLE AND BY THE INTESTATE SUCCESSION ACT. THE SUBSEQUENT APPOINTMENT OF A PERSONAL REPRESENTATIVE FOR THE DECEDENT, OF COURSE, WOULD TERMINATE THIS AFFIDAVIT COLLECTION PROCESS. I BELIEVE THIS PROCEDURE WILL PROVIDE A WORKABLE, QUICK AND INEXPENSIVE ALTERNATIVE FOR SETTLING MANY OF THE ESTATES WHICH NOW CLUTTER OUR CLERKS' OFFICES.

IN CLOSING, LET ME ASSURE YOU THAT THE GENERAL STATUTES COMMISSION HAS CONSIDERED THIS REVISION CAREFULLY. OTHER PROPOSALS FOR MODERNIZING THIS AREA OF THE LAW SUCH AS THE UNIFORM AND MODEL PROBATE CODES HAVE BEEN CONSULTED AND PARTIALLY INCORPORATED WHERE DESIRABLE. IN SHORT, THE BEST THINKING OF SCHOLARS IN THIS AREA HAS BEEN REFINED AND TAILORED BY NORTH CAROLINIANS TO FIT THE LEGAL AND SOCIAL FRAMEWORK OF NORTH CAROLINA.

THANK YOU FOR YOUR ATTENTION AND FOR YOUR SUPPORT OF THIS REVISION.