



**Transfer of Real Property Pursuant to §28A, Article 29:
Notice to Creditors Without Estate Administration
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As the population in our country continues to age, we, as real property practitioners, paralegals and title insurers, will continue to see more transactions that involve the transfer of real property following the death of an owner. It is obviously important to understand the fundamentals of decedents' estates and small estate administrations in order to properly handle a transaction involving a deceased owner. Following the death of an individual who died with sufficient assets, real and personal, it will usually be necessary for a full estate administration to take place in the county where the individual died. However, there are many situations where the estate of the deceased is not of sufficient size to warrant a full estate administration. Our statutes allow for limited administrations, such as collections and summary administration, in these instances. There are certain limitations involving the transfer of real property from a small estate, specifically regarding the requirement that a notice to creditors be given to inform creditors of the death of a potential debtor. There is also a fairly recent statute that was enacted that can help real property practitioners proceed with the transfer of real property without the necessity of proceeding with a full estate administration. This statute is Article 29 of NCGS §28A, Notice to Creditors Without Estate Administration.

NCGS §28A-17-12 is very important in that it sets forth the details as to the rights of creditors in the real property of the decedent. This statute states that if the first publication or posting of the notice to creditors, pursuant to NCGS §28A-14-1, occurs within two years of the death of the decedent, there are two possible outcomes with regard to creditors. First, if the sale of the real property occurs after the death of the decedent but before the first publication or posting of the general notice to creditors, the sale is void as to creditors and personal representatives. Second, if the sale of the real property occurs after the first publication or posting of the general notice to creditors but before the approval of the final accounting, the sale is void as to creditors and personal representatives unless the personal representative joins in the transfer. If the first publication or posting of the notice to creditors does not occur within two years of the death of the decedent, then the sale of the real property is valid as to creditors and personal representatives. What does this mean? If two years have passed since the death of the decedent, the heirs can transfer the property without the joinder of the personal representative and without fear of creditors claims. If a transfer by the heirs occurs prior to the first publication or posting, the transfer is subject to attack by creditors. In this situation, a title insurer would take exception to the rights of creditors, at least until the two year window has closed. Finally, if the transfer occurs after the first publication or posting, the title insurer will require that the personal representative join in the transfer to avoid an exception as to creditors.

Although the running and posting of a general notice to creditors is a required component of a full estate administration, this is not the case in small estate situations or when, due to the assets of the deceased, there is no estate to be administered. In the latter situations, the closing attorney and

purchaser will be faced with the rights of creditors in and to the real property to be transferred unless two years have passed since the death of the decedent. As title insurers, we routinely field questions about the proper way to transfer a decedent's real property shortly after the death has occurred. If the first posting or publication of the notice to creditors has not occurred, and at least two years have not passed since the death, the title insurer will most likely take exception to the creditors' rights, pursuant to §28A-17-12. Most purchasers and lenders will not accept a creditors exception in their title policy. §28A-29 allows for the appointment of a limited personal representative whose sole duties are to properly provide notice to creditors without administration of an estate.

NCGS §28A-29-1 sets forth the requirements for the appointment of a limited personal representative. Under this statute, the role of the limited personal representative is to provide notice to all individuals and entities that have valid claims against the decedent. In order to utilize this statute, the specific facts of the case must meet the following requirements: A petition to serve as a limited personal representative may be made "When (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; (iii) a decedent's estate is being administered under the summary administration provisions of Article 28 of this Chapter; (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," and a personal representative has not already been appointed.

If the preceding requirements for appointment, as set forth in §28A-29-2, are met, the clerk of court shall issue letters of limited administration. The effect of the appointment, as set forth in §28A-29-3, is as follows: "A limited personal representative appointed under this Article shall provide notice to all persons, firms, and corporations having claims against the decedent, and proof of such notice shall be in accordance with the provisions of Article 14 of this Chapter." The limited personal representative will then receive and administer claims just as a personal representative appointed in a full estate administration. The benefit of this statute as to heirs and devisees is that they will be able to transfer real property of the decedent prior to the expiration of two years from the death of the decedent by implementing §28A-29. Assuming that all other requirements for the transfer have been met, such as the joinder of the personal representative and all heirs/devisees and spouses, as required under the specific facts, the transfer can proceed without exception in the respective title policies. This may save time and costs for the Grantors in that they will not need to open an estate solely to run a notice to creditors. Further, in that many heirs/devisees have plans to liquidate the real property as soon as practical after the death of the owner, this approach may allow them to avoid problems with contracts to purchase and lender/loan expirations for buyers.

The sale of real property flowing from a Decedents' estate can be complicated. Always be sure to review the estate file and pertinent statutes when handling such a transaction. And, as always, please call your title insurer if questions arise.