

Renunciation of Title to Real Property Under North Carolina General Statute Chapter 31B

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In certain circumstances it is better to give than to receive. Other times it is simply better not to receive at all. North Carolina like other jurisdictions permits a person to avoid taking title to real property and other property interests pursuant to the provisions of NCGS Chapter 31B.

The ability to renounce property rights can be a valuable tool for estate and tax planning. However, the effect of renunciation on the ultimate vesting of title is mandated by the statute and should receive careful consideration.

Those qualified to renounce property rights include among others, heirs at law, devisees, surviving tenants with right of survivorship or by the entirety and beneficiaries of testamentary or inter vivos trusts. To be effective the renouncing party must comply with the requirements of the statute with respect to the time and place of filing.

The statute does not prescribe a format for the renunciation but it does specify that it must describe the property or interest renounced, declare the renunciation and its extent and be signed and acknowledged by the person renouncing [NCGS 31B-1(c)]. The instrument of renunciation must be filed with the clerk of court in the county in which the decedent's estate administration has commenced or if not commenced in such county where administration could be held. If administration has commenced a copy of the renunciation must be mailed registered or certified mail to the personal representative. Finally, if the interest being renounced involves real property the renunciation shall be recorded in the appropriate register of deeds office.

The renunciation must be filed within nine months of the event which transfers title of the interest subject to any conflicting federal statute [NCGS 31B-2(a)]. Once properly renounced, the interest devolves as if the renouncer had predeceased the date of transfer and relates back "for all purposes to the date the transfer of the renounced interest was complete." [NCGS 31B-3 (a) (1)]. If not filed within the prescribed time period, the property devolves as if the renouncer had died on the date the renunciation is actually filed.

The renouncing party can not specify a beneficiary of the renounced interest. If the provisions of Chapter 31 B are employed, title vests according to the statute. In the case of a real property interest passing by intestate succession the statute provides that the renounced interest will pass to any living issue of the renouncer per stripes. If the renouncer has no living issue the interest passes as if the renouncer predeceased the decedent. In the event the interest renounced was a testamentary disposition, the provisions of NCGS 31-42 (the anti-lapse statute) control.

It appears that the statute could also be employed to avoid liens and claims of creditors of the renouncing party. In Hinson v. Hinson, 80 NC APP 561 (1986) the North Carolina Court of Appeals stated that the act of renunciation is not a grant of legal title. Although decided under the predecessor statute to the current act, the rationale of the court seems equally applicable to Chapter 31B. A note to the court's decision states, "As long as the renouncer receives no fraudulent benefit, his motives for renouncing are immaterial and a valid renunciation will defeat the interests of his judgment creditors." Arguably therefore, the act of renunciation would not be subject to the Uniform Fraudulent Transfer Act NCGS Chapter 39 Article 3A. However, it should be noted that the latter statute was enacted after Hinson and defines transfer to include the "release" of an asset.

The title examiner should also be cognizant of potential problems with any Internal Revenue Service liens recorded against the renouncing party at the time the interest arose. In Drye v. United States of America, 152 F3 892 (8th Circuit 1998) the IRS was successful in arguing that the person renouncing held a sufficient right in property for the tax lien to attach, notwithstanding language in the Arkansas Statute (which closely parallels Chapter 31B) by stating that renunciation "relates back for all purposes to the date of death of the decedent." There are conflicting opinions in other Federal Circuit Courts of Appeals as to the effect of state law renunciation. Some follow the reasoning in Drye while others give effect to state law to defeat the IRS liens. Although there appears to be no opinion involving North Carolina real property on this question, the title examiner should examine the renouncing party to determine if this potential problem exists and to report it to the title insurance underwriter for a determination as to insurability.

Renunciation can be a valuable procedure for redirecting title to real property in North Carolina, provided the renouncing party carefully observes the statutory requirements but always subject to the possibility of federal preemption as demonstrated by the Drye decision.