

## **Chapter 31.**

### **Wills.**

#### **Article 1.**

##### **Execution of Will.**

###### **§ 31-1. Who may make will.**

Any person of sound mind, and 18 years of age or over, may make a will. (1811, c. 280; R.C., c. 119, s. 2; Code, s. 2137; Rev., s. 3111; C.S., s. 4128; 1953, c. 1098, s. 1; 1965, c. 303; 1969, c. 39.)

###### **§ 31-2. Repealed by Session Laws 1953, c. 1098, s. 1.**

**§ 31-3:** Rewritten and renumbered as G.S. 31-3.1 to 31-3.6 by Session Laws 1953, c. 1098, s. 2.

###### **§ 31-3.1. Will invalid unless statutory requirements complied with.**

No will is valid unless it complies with the requirements prescribed therefor by this Article. (1953, c. 1098, s. 2.)

###### **§ 31-3.2. Kinds of wills.**

- (a) Personal property and real property may be devised by
  - (1) An attested written will which complies with the requirements of G.S. 31-3.3, or
  - (2) A holographic will which complies with the requirements of G.S. 31-3.4.
- (b) Personal property may also be devised by a nuncupative will which complies with the requirements of G.S. 31-3.5. (1953, c. 1098, s. 2; 2011-284, s. 26.)

###### **§ 31-3.3. Attested written will.**

- (a) An attested written will is a written will signed by the testator and attested by at least two competent witnesses as provided by this section.
- (b) The testator must, with intent to sign the will, do so by actually signing the will or by having someone else in the testator's presence and at the testator's direction sign the testator's name thereon.
- (c) The testator must signify to the attesting witnesses that the instrument is the testator's instrument by signing it in their presence or by acknowledging to them the testator's signature previously affixed thereto, either of which may be done before the attesting witnesses separately.
- (d) The attesting witnesses must sign the will in the presence of the testator but need not sign in the presence of each other. (1953, c. 1098, s. 2; 2011-344, s. 8.)

###### **§ 31-3.4. Holographic will.**

- (a) A holographic will is a will
  - (1) Written entirely in the handwriting of the testator but when all the words appearing on a paper in the handwriting of the testator are sufficient to constitute a valid holographic will, the fact that other words or printed matter

appear thereon not in the handwriting of the testator, and not affecting the meaning of the words in such handwriting, shall not affect the validity of the will, and

- (2) Subscribed by the testator, or with the testator's name written in or on the will in the testator's own handwriting, and
- (3) Found after the testator's death among the testator's valuable papers or effects, or in a safe-deposit box or other safe place where it was deposited by the testator or under the testator's authority, or in the possession or custody of some person with whom, or some firm or corporation with which, it was deposited by the testator or under the testator's authority for safekeeping.

(b) No attesting witness to a holographic will is required. (1953, c. 1098, s. 2; 1955, c. 73, s. 1; 2011-344, s. 8.)

### **§ 31-3.5. Nuncupative will.**

A nuncupative will is a will

- (1) Made orally by a person who is in that person's last sickness or in imminent peril of death and who does not survive such sickness or imminent peril, and
- (2) Declared to be that person's will before two competent witnesses simultaneously present at the making thereof and specially requested by the person to bear witness thereto. (1953, c. 1098, s. 2; 2011-344, s. 8.)

### **§ 31-3.6. Seal not required.**

A seal is not necessary to the validity of a will. (1953, c. 1098, s. 2.)

**§ 31-4:** Repealed by Session Laws 2015-205, s. 3(b), effective August 11, 2015.

**§ 31-4.1:** Repealed by Session Laws 2010-181, s. 1, effective July 1, 2010.

**§ 31-4.2:** Repealed by Session Laws 2010-181, s. 2, effective July 1, 2010.

## Article 2.

### Revocation of Will.

**§ 31-5:** Rewritten and renumbered as G.S. 31-5.1 by Session Laws 1953, c. 1098, s. 3.

### **§ 31-5.1. Revocation of written will.**

A written will, or any part thereof, may be revoked only

- (1) By a subsequent written will or codicil or other revocatory writing executed in the manner provided herein for the execution of written wills, or
- (2) By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by the testator himself or by another person in the testator's presence and by the testator's direction. (1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2; 1840, c. 62; R.C., c. 119, s. 22; Code, s. 2176; Rev., s. 3115; C.S., s. 4133; 1945, c. 140; 1953, c. 1098, s. 3; 2011-344, s. 8.)

**§ 31-5.2. Revocation of nuncupative will.**

A nuncupative will or any part thereof may be revoked

- (1) By a subsequent nuncupative will, or
- (2) By a subsequent written will or codicil or other revocatory writing executed in the manner provided herein for the execution of written wills. (1953, c. 1098, s. 4.)

**§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.**

A will is not revoked by a subsequent marriage of the maker; and the surviving spouse may petition for an elective share when there is a will made prior to the marriage in the same manner, upon the same conditions, and to the same extent, as a surviving spouse may petition for an elective share when there is a will made subsequent to marriage. (1844, c. 88, s. 10; R.C., c. 119, s. 23; Code, s. 2177; Rev., s. 3116; C.S., s. 4134; 1947, c. 110; 1953, c. 1098, s. 5; 1967, c. 128; 2000-178, s. 5.)

**§ 31-5.4. Revocation by divorce or annulment; revival.**

Dissolution of marriage by absolute divorce or annulment after making a will does not revoke the will of any testator but, unless otherwise specifically provided in the will, it revokes all provisions in the will in favor of the testator's former spouse or purported former spouse, including, but not by way of limitation, any provision conferring a general or special power of appointment on the former spouse or purported former spouse and any appointment of the former spouse or purported former spouse as executor, trustee, conservator, or guardian. If provisions are revoked solely by this section, they are revived by the testator's remarriage to the former spouse or purported former spouse. (1953, c. 1098, s. 6; 1977, c. 74, s. 3; 1991, c. 587, s. 1.)

**§ 31-5.5. After-born or after-adopted child; children born out of wedlock; effect on will.**

(a) A will shall not be revoked by the subsequent birth of a child to the testator, or by the subsequent adoption of a child by the testator, or by the subsequent entitlement of an after-born child born out of wedlock to take as an heir of the testator pursuant to the provisions of G.S. 29-19(b), but any after-born, after-adopted or entitled after-born child born out of wedlock shall have the right to share in the testator's estate to the same extent the after-born, after-adopted, or entitled after-born child born out of wedlock would have shared if the testator had died intestate unless:

- (1) The testator made some provision in the will for the child, whether adequate or not;
- (2) It is apparent from the will itself that the testator intentionally did not make specific provision therein for the child;
- (3) The testator had children living when the will was executed, and none of the testator's children actually take under the will;
- (4) The surviving spouse receives all of the estate under the will; or
- (5) The testator made provision for the child that takes effect upon the death of the testator, whether adequate or not.

(b) The provisions of G.S. 28A-22-2 shall be construed as being applicable to after-adopted children and to after-born children, whether legitimate or entitled children born out of wedlock.

(c) The terms "after-born," "after-adopted" and "entitled after-born" as used in this section refer to children born, adopted or entitled subsequent to the execution of the will. (1868-9, c. 113, s. 62; Code, s. 2145; Rev., s. 3145; C.S., s. 4169; 1953, c. 1098, s. 7; 1955, c. 541; 1973, c. 1062, s. 2; 1985, c. 689, s. 9; 1995, c. 161, s. 1; 1997-456, s. 55.8; 2011-344, s. 8; 2013-198, s. 14.)

**§ 31-5.6. No revocation by subsequent conveyance.**

No conveyance or other act made or done subsequently to the execution of a will of, or relating to, any real or personal estate therein comprised, except an act by which such will shall be duly revoked, shall prevent the operation of the will with respect to any estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of the testator's death. (1844, c. 88, s. 2; R.C. c. 119, s. 25; Code, s. 2179; Rev., s. 3118; C.S., s. 4136; 1953, c. 1098, s. 8; 2011-344, s. 8.)

**§ 31-5.7. Specific provisions for revocation exclusive; effect of changes in circumstances.**

No will can be revoked in whole or in part by any act of the testator or by a change in the testator's circumstances or condition except as provided by G.S. 31-5.1 through 31-5.6 inclusive. (1953, c. 1098, s. 9; 2011-344, s. 8.)

**§ 31-5.8. Revival of revoked will.**

No will or any part thereof that has been in any manner revoked can, except as provided in G.S. 31-5.4, be revived otherwise than by a reexecution thereof, or by the execution of another will in which the revoked will or part thereof is incorporated by reference. (1953, c. 1098, s. 10; 1991, c. 587, s. 2.)

**§ 31-6:** Renumbered as G.S. 31-5.3 by Session Laws 1953, c. 1098, s. 5.

**§ 31-7. Repealed by Session Laws 1953, c. 1098, s. 9.**

**§ 31-8:** Renumbered as G.S. 31-5.6 by Session Laws 1953, c. 1098, s. 8.

Article 3.

Witnesses to Will.

**§ 31-8.1. Who may witness.**

Any person competent to be a witness generally in this State may act as a witness to a will. (1953, c. 1098, s. 15.)

**§ 31-9. Executor competent witness.**

No person, on account of being an executor of a will, shall be incompetent to be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof. (R.C., c. 119, s. 9; Code, s. 2146; Rev., s. 3119; C.S., s. 4137.)

**§ 31-10. Beneficiary competent witness; when interest rendered void.**

(a) A witness to an attested written or a nuncupative will, to whom or to whose spouse a beneficial interest in property, or a power of appointment with respect thereto, is given by the will, is nevertheless a competent witness to the will and is competent to prove the execution or validity thereof. However, if there are not at least two other witnesses to the will who are disinterested, the interested witness and the interested witness's spouse and anyone claiming under the interested witness shall take nothing under the will, and so far only as their interests are concerned the will is void.

(b) A beneficiary under a holographic will may testify to such competent, relevant and material facts as tend to establish such holographic will as a valid will without rendering void the benefits to be received by the beneficiary thereunder. (R.C., c. 119, s. 10; Code, s. 2147; Rev., s. 3120; C.S., s. 4138; 1953, c. 1098, s. 11; 1955, c. 73, s. 2; 2011-344, s. 8.)

**§ 31-10.1. Corporate trustee not disqualified by witnessing of will by stockholder.**

A corporation named as a trustee in a will is not disqualified to act as trustee by reason of the fact that a person owning stock in the corporation signed the will as a witness. (1949, c. 44.)

Article 4.

Depository for Wills.

**§ 31-11. Depositories in offices of clerks of superior court where living persons may file wills.**

The clerk of the superior court in each county of North Carolina shall be required to keep a receptacle or depository in which any person who desires to do so may file that person's will for safekeeping; and the clerk shall, upon written request of the testator, or the duly authorized agent or attorney for the testator, permit said will or testament to be withdrawn from said depository or receptacle at any time prior to the death of the testator: Provided, that the contents of said will shall not be made public or open to the inspection of anyone other than the testator or the testator's duly authorized agent until such time as the said will shall be offered for probate. (1937, c. 435, s. 1; 1971, c. 528, s. 28; 2011-344, s. 8.)

**§§ 31-11.1 through 31-11.5. Reserved for future codification purposes.**

Article 4A.

Self-Proved Wills.

**§ 31-11.6. How attested wills may be made self-proved.**

(a) Any will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in the following form, or in a similar form showing the same intent:

"I, \_\_\_\_\_, the testator, sign my name to this instrument this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Testator

We \_\_\_\_\_, \_\_\_\_\_, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

THE STATE OF \_\_\_\_\_.  
COUNTY OF \_\_\_\_\_.

Subscribed, sworn to and acknowledged before me by \_\_\_\_\_. the testator and subscribed and sworn to before me by \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_ day of

\_\_\_\_\_  
(SEAL)

(SIGNED) \_\_\_\_\_  
(OFFICIAL CAPACITY OF OFFICER)"

(b) An attested written will executed as provided by G.S. 31-3.3 may at any time subsequent to its execution be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the attesting witnesses, each made before an officer authorized to administer oaths under the laws of this State, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

"STATE OF NORTH CAROLINA  
"COUNTY/CITY OF \_\_\_\_\_

"Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_, and \_\_\_\_\_, known to me to be the testator and the witnesses, respectively, whose names are signed to the

attached or foregoing instrument and, all of these persons being by me first duly sworn. The testator, declared to me and to the witnesses in my presence: That said instrument is his last will; that he had willingly signed or directed another to sign the same for him, and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; or, that the testator signified that the instrument was his instrument by acknowledging to them his signature previously affixed thereto.

The said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his last will in the presence of said witnesses who, in his presence and at his request, subscribed their names thereto as attesting witnesses and that the testator, at the time of the execution of said will, was over the age of 18 years and of sound and disposing mind and memory.

\_\_\_\_\_  
Testator  
\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Witness

Subscribed, sworn and acknowledged before me by \_\_\_\_\_, the testator, subscribed and sworn before me by \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ witnesses, this \_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_ (SEAL)

(SIGNED) \_\_\_\_\_  
(OFFICIAL CAPACITY OF OFFICER)"

(c) The sworn statement of any such witnesses taken as herein provided shall be accepted by the court as if it had been taken before such court.

(d) Any will recognized as valid under G.S. 31-46(1) or (2) and shown by the propounder to have been made self-proved under the laws of the jurisdiction in which the testator was physically present at the time of execution or the place where the testator was domiciled at the time of execution or at the time of death shall be considered as self-proved.

(e) A military testamentary instrument executed in accordance with the provisions of 10 U.S.C. § 1044d(d) or any successor or replacement statute shall be considered as self-proved. (1977, c. 795, s. 1; 1979, c. 536, s. 1; 1981, c. 599, s. 8; 1999-456, s. 59; 2013-91, s. 1(f); 2019-178, s. 3(a).)

## Article 5.

### Probate of Will.

**§§ 31-12 through 31-31.2:** Recodified as Article 2A of Chapter 28A of the General Statutes, G.S. 28A-2A-1 through G.S. 28A-2A-23, by Session Laws 2011-344, s. 3, effective January 1, 2012, and applicable to estates of decedents dying on or after that date.

**§ 31-18:** §§ 31-12 through 31-31.2: Recodified as Article 2A of Chapter 28A of the General Statutes, G.S. 28A-2A-1 through G.S. 28A-2A-23, by Session Laws 2011-344, s. 3, effective January 1, 2012, and applicable to estates of decedents dying on or after that date.

**§§ 31-12 through 31-31.2:** Recodified as Article 2A of Chapter 28A of the General Statutes, G.S. 28A-2A-1 through G.S. 28A-2A-23, by Session Laws 2011-344, s. 3, effective January 1, 2012, and applicable to estates of decedents dying on or after that date.

**§§ 31-25 through 31-25.1:** Recodified as Article 2A of Chapter 28A of the General Statutes, G.S. 28A-2A-1 through G.S. 28A-2A-23, by Session Laws 2011-344, s. 3, effective January 1, 2012, and applicable to estates of decedents dying on or after that date.

**§ 31-26:** Recodified as Article 2A of Chapter 28A of the General Statutes, G.S. 28A-2A-1 through G.S. 28A-2A-23, by Session Laws 2011-344, s. 3, effective January 1, 2012, and applicable to estates of decedents dying on or after that date.

**§§ 31-12 through 31-31.2:** Recodified as Article 2A of Chapter 28A of the General Statutes, G.S. 28A-2A-1 through G.S. 28A-2A-23, by Session Laws 2011-344, s. 3, effective January 1, 2012, and applicable to estates of decedents dying on or after that date.

## Article 6.

### Caveat to Will.

#### **§ 31-32. Filing of caveat.**

(a) At the time of application for probate of any will, and the probate thereof in common form, or at any time within three years thereafter, any party interested in the estate, may appear in person or by attorney before the clerk of the superior court and enter a caveat to the probate of such will; Provided that if any person entitled to file a caveat be within the age of 18 years, or incompetent as defined in G.S. 35A-1101(7) or (8), then such person may file a caveat within three years after the removal of such disability.

(b) The caveat shall be filed in the decedent's estate file. The clerk of superior court shall give notice of the filing by making an entry upon the page of the will book where the will is recorded, evidencing that the caveat has been filed and giving the date of such filing.

(c) If a will has been probated in solemn form pursuant to G.S. 28A-2A-7, any party who was properly served in that probate in solemn form shall be barred from filing a caveat. (C.C.P., s. 446; Code, s. 2158; Rev., s. 3135; 1907, c. 862; C.S., s. 4158; 1925, c. 81; 1951, c. 496, ss. 1, 2; 1971, c. 1231, s. 1; 2011-344, s. 8.)

#### **§ 31-33. Cause transferred to trial docket.**



(a) Upon the filing of a caveat, the clerk shall transfer the cause to the superior court for trial by jury. The caveat shall be served upon all interested parties in accordance with G.S. 1A-1, Rule 4 of the Rules of Civil Procedure.

(b) After service under subsection (a) of this section, the caveator shall cause notice of a hearing to align the parties to be served upon all parties in accordance with G.S. 1A-1, Rule 5 of the Rules of Civil Procedure. At the alignment hearing, all of the interested parties who wish to be aligned as parties shall appear and be aligned by the court as parties with the caveators or parties with the propounders of the will. If an interested party does not appear to be aligned or chooses not to be aligned, the judge shall dismiss that interested party from the proceeding, but that party shall be bound by the proceeding.

(c) Within 30 days following the entry of an order aligning the parties, any interested party who was aligned may file a responsive pleading to the caveat, provided, however, that failure to respond to any averment or claim of the caveat shall not be deemed an admission of that averment or claim. An extension of time to file a responsive pleading to the caveat may be granted as provided by G.S. 1A-1, Rule 6 of the Rules of Civil Procedure.

(d) Upon motion of an aligned party, the court may require a caveator to provide security in such sum as the court deems proper for the payment of such costs and damages as may be incurred or suffered by the estate if the estate is found to have been wrongfully enjoined or restrained. The court may consider relevant facts related to whether a bond should be required and the amount of any such bond, including, but not limited to, (i) whether the estate may suffer irreparable injury, loss, or damage as a result of the caveat and (ii) whether the caveat has substantial merit. Provisions for bringing suit in forma pauperis apply to the provisions of this subsection. (C.C.P., s. 447; Code, s. 2159; 1899, c. 13; 1901, c. 748; Rev., s. 3136; 1909, c. 74; C.S., s. 4159; 1947, c. 781; 1971, c. 528, s. 29; 1973, c. 458; 2011-284, s. 32; 2011-344, s. 8; 2014-115, s. 2.4.)

**§ 31-34:** Repealed by Session Laws 2011-344, s. 8, effective January 1, 2012, and applicable to estates of decedents dying on or after that date.

**§ 31-35. Affidavit of witness as evidence.**

Whenever the subscribing witness to any will shall die, or be mentally incompetent, or be absent beyond the State, it shall be competent upon any issue of devisavit vel non to give in evidence the affidavits and proofs taken by the clerk upon admitting the will to probate in common form, and such affidavit and proceedings before the clerk shall be prima facie evidence of the due and legal execution of said will. (1899, c. 680, s. 2; Rev., s. 3121; C.S., s. 4160; 1947, c. 781; 2011-344, s. 8.)

**§ 31-36. Effect of caveat on estate administration.**

(a) Order of Clerk. – Where a caveat is filed, the clerk of the superior court shall forthwith issue an order that shall apply during the pendency of the caveat to any personal representative, having the estate in charge, as follows:

- (1) Distributions to beneficiaries. – That there shall be no distributions of assets of the estate to any beneficiary;

- (2) Commissions. – That no commissions shall be advanced or awarded to any personal representative;
- (3) Accountings. – That the personal representative shall file all accountings required by the clerk of superior court and that the personal representative may pay any applicable filing fees associated with those accountings from the assets of the estate;
- (4) Preservation of estate assets. – That the personal representative shall preserve the property of the estate and that the personal representative is authorized to pursue and prosecute claims that the estate may have against others; and
- (5) Taxes, claims and debts of estate. – That the personal representative may file all appropriate tax returns and that the personal representative may pay, in accordance with the procedures of subsection (b) of this section: taxes; funeral expenses of the decedent; debts that are a lien upon the property of the decedent; bills of the decedent accrued before death; claims against the estate that are timely filed; professional fees related to administration of the estate, including fees for tax return preparation, appraisal fees, and attorneys' fees for estate administration.

(b) Procedures. – In regard to payment of any of the items listed in subdivision (5) of subsection (a) of this section, the personal representative shall file with the clerk a notice of the personal representative's intent to pay those items and shall serve the notice upon all parties to the caveat, pursuant to G.S. 1A-1, Rule 4 of the Rules of Civil Procedure. If within 10 days of service any party files with the clerk a written objection to that payment, the clerk shall schedule a hearing and determine whether the proposed payment shall be made. If no such objection is filed with the clerk, the clerk may approve the payment without hearing, and upon that approval, the personal representative may make the payment. The parties to the caveat may consent to any such payment, and upon such consent, the clerk may approve the payment without hearing. The clerk may defer ruling on the payment pending the resolution of the caveat.

(c) Preservation of Estate Assets. – Questions regarding the use, location, and disposition of assets that cannot be resolved by the parties and consented to by the clerk shall be decided by the clerk. When a question has not been resolved by agreement, either party may request a hearing before the clerk upon 10 days notice and shall serve the notice upon all parties to the caveat, pursuant to G.S. 1A-1, Rule 4 of the Rules of Civil Procedure. Decisions of the clerk may be appealed to the superior court pursuant to G.S. 1-301.3. (C.C.P., s. 448; Code, s. 2160; Rev., s. 3137; C.S., s. 4161; 1927, c. 119; 2009-131, s. 1; 2011-344, s. 8.)

**§ 31-37:** Repealed by Session Laws 2011-344, s. 8, effective January 1, 2012, and applicable to estates of decedents dying on or after that date.

**§ 31-37.1. Settlement agreement; filing of judgment.**

(a) Prior to an entry of judgment by the superior court in a caveat proceeding, the parties may enter into a settlement agreement, which must be approved by the superior court. Upon approval of a settlement agreement, the court shall enter judgment, without a

verdict by a jury, in accordance with the terms of the settlement agreement. The consent of interested parties who are not aligned as parties pursuant to G.S. 31-33 is not necessary for a settlement agreement under this section.

(b) When judgment is entered by the superior court in a caveat proceeding, the clerk of superior court shall file a copy of the judgment in the estate file and shall make entry upon the page of the will book where such will is recorded to the effect that final judgment has been entered, either sustaining or setting aside the will. (1989 (Reg. Sess., 1990), c. 949, s. 1; 2011-344, s. 8.)

## Article 7.

### Construction of Will.

#### **§ 31-38. Devise presumed to be in fee.**

When real estate shall be devised to any person, the same shall be held and construed to be a devise in fee simple, unless such devise shall, in plain and express words, show, or it shall be plainly intended by the will, or some part thereof, that the testator intended to convey an estate of less dignity. (1784, c. 204, s. 12; R.C., c. 119, s. 26; Code, s. 2180; Rev., s. 3138; C.S., s. 4162.)

#### **§ 31-39. Probate necessary to pass title; rights of lien creditors and purchasers; recordation in county where real property lies.**

(a) A duly probated will is effective to pass title to real and personal property.

(b) A will is not effective to pass title to real or personal property as against lien creditors or purchasers for valuable consideration from the intestate heirs at law of a decedent, unless the will is probated or offered for probate before the earlier of (i) the date of the approval by the clerk of the superior court having jurisdiction of the decedent's estate of the final account filed by the personal representative of the decedent's estate, or (ii) the date that is two years from the date of death of the decedent. If the will is fraudulently suppressed, stolen, or destroyed, or is lost, and an action or proceeding is instituted within the time limitation set forth in this subsection to obtain that will or establish that will as provided by law, the time limitation under this subsection begins to run from the termination of that action or proceeding.

(c) A will duly probated in one county of this State is not effective to pass title to an interest in real property located in any other county of this State as against lien creditors or purchasers for valuable consideration from the intestate heirs at law of a decedent unless a certified copy of the will and a certified copy of the certificate of probate of the will are filed in the office of the clerk of superior court in the county where the real property lies within the time limitation set forth in subsection (b) of this section.

(d) A conveyance made by the intestate heirs at law of a decedent before the expiration of the time limitation set forth in subsection (b) of this section shall, upon the expiration of that time, become effective to the same extent as if the conveyance were made after the expiration of that time, unless before the expiration of that time, a proceeding is instituted in the proper court to probate a will of the decedent. (1784, c. 225, s. 6; R.C., c.

119, s. 20; Code, s. 2174; Rev., s. 3139; 1915, c. 219; C.S., s. 4163; 1953, c. 920, s. 1; 2012-68, s. 2; 2014-107, s. 2.2.)

**§ 31-40. What property passes by will.**

Any testator, by the testator's a will duly executed, may devise or dispose of all real and personal property which the testator shall be entitled to at the time of the testator's death, and which, if not so devised or disposed of, would descend or devolve upon the testator's heirs at law, or upon the testator's personal representative; and the power hereby given shall extend to all contingent, executory, or other future interest in any real or personal property, whether the testator may or may not be the person or one of the persons in whom the same may become vested, or whether the testator may be entitled thereto under the instrument by which the same was created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, whether any such condition has or has not been broken at the testator's death, all other rights of entry, and possibilities of reverter; and also to such of the same estates, interests, and rights respectively, and other real and personal property, as the testator may be entitled to at the time of the testator's death, notwithstanding that the testator may become entitled to the same subsequently to the execution of the testator's will. (1844, c. 88, s. 1; R.C., c. 119, s. 5; Code, s. 2140; Rev., s. 3140; C.S., s. 4164; 1973, c. 1446, s. 15; 2011-284, s. 33; 2011-344, s. 8.)

**§ 31-41. Will relates to death of testator.**

Every will shall be construed, with reference to the real and personal estate comprised therein, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will. (1844, c. 88, s. 3; R.C., c. 119, s. 16; Code, s. 2141; Rev., s. 3141; C.S., s. 4165.)

**§ 31-42. Failure of devises by lapse or otherwise; renunciation; 120-hour survivorship requirement, revised simultaneous death act, Article 24, Chapter 28A.**

(a) Unless the will indicates a contrary intent, if a devisee predeceases the testator, whether before or after the execution of the will, and if the devisee is a grandparent of or a descendant of a grandparent of the testator, then the issue of the predeceased devisee shall take in place of the deceased devisee. The devisee's issue shall take the deceased devisee's share in the same manner that the issue would take as heirs of the deceased devisee under the intestacy provisions in effect at the time of the testator's death. The provisions of this section apply whether the devise is to an individual, to a class, or is a residuary devise. In the case of the class devise, the issue shall take whatever share the deceased devisee would have taken had the devisee survived the testator; in the event the deceased class member leaves no issue, the devisee's share shall devolve upon the members of the class who survived the testator and the issue of any deceased members taking by substitution.

(b) Unless the will indicates a contrary intent, if the provisions of subsection (a) of this section do not apply to a devise to a devisee who predeceases the testator, or if a devise otherwise fails, the property shall pass to the residuary devisee or devisees in proportion to their share of the residue. If the devise is a residuary devise, it shall augment the shares of the other residuary devisees, including the shares of any substitute takers under subsection (a) of this section. If there are no residuary devisees, then the property shall pass by intestacy.

(c) Renunciation of a devise is as provided for in Chapter 31B of the General Statutes.

(c1) The determination of whether a devisee has predeceased the testator shall be made as provided by Article 24 of Chapter 28A of the General Statutes.

(d) As used in this section, "devisee" means any person entitled to take real or personal property under the provisions of a will. (1844, c. 88, s. 4; R.C., c. 119, s. 7; Code, s. 2142; Rev., s. 3142; 1919, c. 28; C.S., s. 4166; 1951, c. 762, s. 1; 1953, c. 1084; 1965, c. 938, s. 1; 1975, c. 371, s. 3; 1979, c. 525, s. 5; 1987, c. 86, ss. 1, 2; 1989, c. 244; 1999-145, s. 1; 2001-83, s. 1; 2007-132, ss. 3(a), (b).)

**§§ 31-42.1 through 31-42.2. Repealed by Session Laws 1965, c. 938, s. 2.**

**§ 31-43:** Repealed by Session Laws 2015-205, s. 3(b), effective August 11, 2015.

**§ 31-44. Repealed by Session Laws 1951, c. 762, s. 2.**

**§ 31-45:** Rewritten and renumbered as G.S. 31-5.5 by Session Laws 1953, c. 1098, s. 7.

**§ 31-46. Validity of will; which laws govern.**

A will is valid if it meets the requirements of the applicable provisions of law in effect in this State either at the time of its execution or at the time of the death of the testator, or if any of the following apply:

- (1) The will's execution complied with the law of the jurisdiction in which the testator was physically present at the time of execution.
- (2) Its execution complied with the law of the place where the testator was domiciled at the time of execution or at the time of death.
- (3) It is a military testamentary instrument executed in accordance with the provisions of 10 U.S.C. § 1044d or any successor or replacement statute. (1953, c. 1098, s. 14; 2013-91, s. 1(g); 2019-178, s. 3(b).)

**§ 31-46.1. Construction of certain formula clauses applicable to estates of decedents dying in calendar year 2010.**

(a) Purpose. – The federal estate tax and generation-skipping transfer tax expired January 1, 2010, for one year. To carry out the intent of decedents in the construction of wills and trusts and to promote judicial economy in the administration of trusts and estates, this section construes certain formula clauses that reference federal estate and generation-skipping transfer tax laws and that are used in wills or codicils of decedents who die in or before calendar year 2010.

(b) Applicability. – This section applies to the following:

- (1) To a will or codicil executed by a decedent before December 31, 2009, that contains a formula provision described in subsection (c) of this section if the decedent dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax, unless the will or codicil clearly manifests an intent that a rule contrary to the rule of construction described in subsection (c) of this section applies.

- (2) To the terms of a will or codicil executed by a decedent who dies before December 31, 2009, providing for a disposition of property that contains a formula provision described in subsection (c) of this section and occurs as a result of the death of another individual who dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax, unless the terms of the will or codicil clearly manifests an intent that a rule contrary to the rule of construction described in subsection (c) of this section applies.

(c) Construction. – A will or codicil subject to this section is considered to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009, if the will or codicil contains a formula that meets one or more of the following conditions:

- (1) The formula refers to any of the following: "applicable credit amount," "applicable exclusion amount," "applicable exemption amount," "applicable fraction," "estate tax exemption," "generation-skipping transfer tax exemption," "GST exemption," "inclusion ratio," "marital deduction," "maximum marital deduction," "unified credit," or "unlimited marital deduction."
- (2) The formula measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes.
- (3) The formula is otherwise based on a provision of federal estate tax or federal generation-skipping transfer tax law similar to the provisions in subdivision (1) or (2) of this subsection.

(d) Judicial Determination. – The personal representative or an affected beneficiary under a will or testamentary trust may bring an action in the superior court division of the General Court of Justice under Article 26 of Chapter 1 of the General Statutes, and the trustee of a trust created under the will or an affected beneficiary under the trust may bring a proceeding as permitted under Article 2 of Chapter 36C of the General Statutes to determine whether the decedent intended that the references under subsection (c) of this section be construed with respect to the federal law as it existed after December 31, 2009. The action must be commenced within 12 months following the death of the decedent. (2010-126, s. 1.)

## Article 8.

### Testamentary Additions to Trusts.

#### **§ 31-47. Testamentary additions to trusts.**

- (a) A will may validly devise property to:
  - (1) The trustee of a trust established before the testator's death by the testator, by the testator and some other person, or by some other person, including a trust authorized by G.S. 36C-4-401.1; or
  - (2) The trustee of a trust to be established at the testator's death, if the trust is identified in the testator's will and its terms are set forth in a written instrument executed before or concurrently with the execution of the testator's will,

regardless of the existence, size, or character of the corpus of the trust during the testator's lifetime.

The devise is not invalid because the trust is amendable or revocable, or because the trust instrument or any amendment thereto was not executed in the manner required for wills, or because the trust was amended after the execution of the testator's will or after the testator's death. A revocable trust to which property is first transferred under subdivision (2) of this subsection is an inter vivos trust and not a testamentary trust and, as of the date of the execution of the trust instrument, is subject to Article 6 of Chapter 36C of the General Statutes.

(b) Unless the testator's will provides otherwise, property devised to the trustee of a trust described in subsection (a) of this section is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(c) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

(d) A devise to a trust shall be construed as a devise to the trustee of that trust.

(e) For purposes of this section, "devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(f) Nothing in this section alters, amends, or in any manner affects the application of the doctrine of acts of independent significance. (1955, c. 388; 1957, c. 783, s. 1; 1975, c. 161; 2007-184, s. 1.)

**§ 31-48:** Reserved for future codification purposes.

**§ 31-49:** Reserved for future codification purposes.

**§ 31-50:** Reserved for future codification purposes.

#### Article 9.

##### Incorporation by Reference; Acts of Independent Significance.

**§ 31-51. Incorporation by reference.**

A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. (2007-184, s. 2.)

**§ 31-52. Acts and events of independent significance.**

A will may dispose of property by reference to acts and events that have significance apart from their effect upon the disposition made by the will, whether they occur before or after the execution of the will or before or after the testator's death. These acts and events may include the execution or revocation of another individual's will and the safekeeping of items in a secured depository. (2007-184, s. 2.)

Article 10.

Reformation or Modification of Wills.

**§ 31-61. Reformation of will to correct mistakes.**

The court may reform the terms of a will, if the terms of the will are ambiguous, to conform the terms to the testator's intent if it is proved by clear and convincing evidence what the testator's intent was and that the terms of the will were affected by a mistake of fact or law, whether in expression or inducement. (2017-152, s. 1.)

**§ 31-62. Modification of will to achieve testator's tax objectives.**

To achieve a testator's tax objectives, the court may modify the terms of a will in a manner that is not contrary to the testator's probable intent. The court may provide that the modification has retroactive effect. (2017-152, s. 1.)

**§ 31-63. Filing of action for reformation or modification of will; bar to caveat.**

(a) An action for reformation or modification of a will shall be filed in the superior court division of the General Court of Justice under Article 26 of Chapter 1 of the General Statutes.

(b) The personal representative is a necessary party to an action for reformation or modification of a will.

(c) If a person interested in the estate files an action for reformation or modification of a will, that person is barred from thereafter filing a caveat to the will under Article 6 of this Chapter. (2017-152, s. 1.)