

1 **Chapter 31.**

2 **Wills.**

3 **Article 1.**

4 **Execution of Will.**

5 **§ 31-1. Who may make will.**

6 Any person of sound mind, and 18 years of age or over, may make a will. (1811, c. 280;
7 R.C., c. 119, s. 2; Code, s. 2137; Rev., s. 3111; C.S., s. 4128; 1953, c. 1098, s. 1; 1965, c. 303;
8 1969, c. 39.)
9

10 **§ 31-2. Repealed by Session Laws 1953, c. 1098, s. 1.**

11
12 **§ 31-3:** Rewritten and renumbered as G.S. 31-3.1 to 31-3.6 by Session Laws 1953, c. 1098, s.
13 2.
14

15 **§ 31-3.1. Will invalid unless statutory requirements complied with.**

16 No will is valid unless it complies with the requirements prescribed therefor by this Article.
17 (1953, c. 1098, s. 2.)
18

19 **§ 31-3.2. Kinds of wills.**

- 20 (a) Personal property and real property may be devised by
21 (1) An attested written will which complies with the requirements of G.S.
22 31-3.3, or
23 (2) A holographic will which complies with the requirements of G.S. 31-3.4.
24 (b) Personal property may also be devised by a nuncupative will which complies with
25 the requirements of G.S. 31-3.5. (1953, c. 1098, s. 2; 2011-284, s. 26.)
26

27 **§ 31-3.3. Attested written will.**

- 28 (a) An attested written will is a written will signed by the testator and attested by at
29 least two competent witnesses as provided by this section.
30 (b) The testator must, with intent to sign the will, do so by actually signing the will or
31 by having someone else in the testator's presence and at the testator's direction sign the
32 testator's name thereon.
33 (c) The testator must signify to the attesting witnesses that the instrument is the
34 testator's instrument by signing it in their presence or by acknowledging to them the testator's
35 signature previously affixed thereto, either of which may be done before the attesting witnesses
36 separately.
37 (d) The attesting witnesses must sign the will in the presence of the testator but need not
38 sign in the presence of each other. (1953, c. 1098, s. 2; 2011-344, s. 8.)
39

40 **§ 31-3.4. Holographic will.**

- 41 (a) A holographic will is a will
42 (1) Written entirely in the handwriting of the testator but when all the words
43 appearing on a paper in the handwriting of the testator are sufficient to
44 constitute a valid holographic will, the fact that other words or printed matter
45 appear thereon not in the handwriting of the testator, and not affecting the
46 meaning of the words in such handwriting, shall not affect the validity of the
47 will, and
48 (2) Subscribed by the testator, or with the testator's name written in or on the
49 will in the testator's own handwriting, and
50 (3) Found after the testator's death among the testator's valuable papers or
51 effects, or in a safe-deposit box or other safe place where it was deposited by

1 the testator or under the testator's authority, or in the possession or custody
2 of some person with whom, or some firm or corporation with which, it was
3 deposited by the testator or under the testator's authority for safekeeping.

4 (b) No attesting witness to a holographic will is required. (1953, c. 1098, s. 2; 1955, c.
5 73, s. 1; 2011-344, s. 8.)

6
7 **§ 31-3.5. Nuncupative will.**

8 A nuncupative will is a will

- 9 (1) Made orally by a person who is in that person's last sickness or in imminent
10 peril of death and who does not survive such sickness or imminent peril, and
11 (2) Declared to be that person's will before two competent witnesses
12 simultaneously present at the making thereof and specially requested by the
13 person to bear witness thereto. (1953, c. 1098, s. 2; 2011-344, s. 8.)
14

15 **§ 31-3.6. Seal not required.**

16 A seal is not necessary to the validity of a will. (1953, c. 1098, s. 2.)
17

18 **§ 31-4. Execution of power of appointment by will.**

19 No appointment, made by will in the exercise of any power, shall be valid unless the same
20 be executed in the manner by law required for the execution of wills; and every will, executed
21 in such manner, shall, so far as respects the execution and attestation thereof, be a valid
22 execution of a power of appointment by will, notwithstanding it shall have been expressly
23 required that a will made in exercise of such power should be executed with some additional or
24 other form of execution or solemnity. (1844, c. 88, s. 9; R.C., c. 119, s. 4; Code, s. 2139; Rev.,
25 s. 3114; C.S., s. 4132.)
26

27 **§ 31-4.1:** Repealed by Session Laws 2010-181, s. 1, effective July 1, 2010.
28

29 **§ 31-4.2:** Repealed by Session Laws 2010-181, s. 2, effective July 1, 2010.
30

31 Article 2.

32 Revocation of Will.

33 **§ 31-5:** Rewritten and renumbered as G.S. 31-5.1 by Session Laws 1953, c. 1098, s. 3.
34

35 **§ 31-5.1. Revocation of written will.**

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

- 37 (1) By a subsequent written will or codicil or other revocatory writing executed
38 in the manner provided herein for the execution of written wills, or
39 (2) By being burnt, torn, canceled, obliterated, or destroyed, with the intent and
40 for the purpose of revoking it, by the testator himself or by another person in
41 the testator's presence and by the testator's direction. (1784, c. 204, s. 14;
42 1819, c. 1004, ss. 1, 2; 1840, c. 62; R.C., c. 119, s. 22; Code, s. 2176; Rev.,
43 s. 3115; C.S., s. 4133; 1945, c. 140; 1953, c. 1098, s. 3; 2011-344, s. 8.)
44

45 **§ 31-5.2. Revocation of nuncupative will.**

46 A nuncupative will or any part thereof may be revoked

- 47 (1) By a subsequent nuncupative will, or
48 (2) By a subsequent written will or codicil or other revocatory writing executed
49 in the manner provided herein for the execution of written wills. (1953, c.
50 1098, s. 4.)
51

1 **§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.**

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

8
9 **§ 31-5.4. Revocation by divorce or annulment; revival.**

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

19
20 **§ 31-5.5. After-born or after-adopted child; illegitimate child; effect on will.**

21 (a) A will shall not be revoked by the subsequent birth of a child to the testator, or by
22 the subsequent adoption of a child by the testator, or by the subsequent entitlement of an
23 after-born illegitimate child to take as an heir of the testator pursuant to the provisions of G.S.
24 29-19(b), but any after-born, after-adopted or entitled after-born illegitimate child shall have
25 the right to share in the testator's estate to the same extent the after-born, after-adopted, or
26 entitled after-born illegitimate child would have shared if the testator had died intestate unless:

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

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

38 (c) The terms "after-born," "after-adopted" and "entitled after-born" as used in this
39 section refer to children born, adopted or entitled subsequent to the execution of the will.
40 (1868-9, c. 113, s. 62; Code, s. 2145; Rev., s. 3145; C.S., s. 4169; 1953, c. 1098, s. 7; 1955, c.
41 541; 1973, c. 1062, s. 2; 1985, c. 689, s. 9; 1995, c. 161, s. 1; 1997-456, s. 55.8; 2011-344, s.
42 8.)

43
44 **§ 31-5.6. No revocation by subsequent conveyance.**

45 No conveyance or other act made or done subsequently to the execution of a will of, or
46 relating to, any real or personal estate therein comprised, except an act by which such will shall
47 be duly revoked, shall prevent the operation of the will with respect to any estate or interest in
48 such real or personal estate as the testator shall have power to dispose of by will at the time of
49 the testator's death. (1844, c. 88, s. 2; R.C. c. 119, s. 25; Code, s. 2179; Rev., s. 3118; C.S., s.
50 4136; 1953, c. 1098, s. 8; 2011-344, s. 8.)

1 **§ 31-5.7. Specific provisions for revocation exclusive; effect of changes in circumstances.**

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

5
6 **§ 31-5.8. Revival of revoked will.**

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

11
12 **§ 31-6:** Renumbered as G.S. 31-5.3 by Session Laws 1953, c. 1098, s. 5.

13
14 **§ 31-7. Repealed by Session Laws 1953, c. 1098, s. 9.**

15
16 **§ 31-8:** Renumbered as G.S. 31-5.6 by Session Laws 1953, c. 1098, s. 8.

17
18 Article 3.
19 Witnesses to Will.

20 **§ 31-8.1. Who may witness.**

21 Any person competent to be a witness generally in this State may act as a witness to a will.
22 (1953, c. 1098, s. 15.)

23
24 **§ 31-9. Executor competent witness.**

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

28
29 **§ 31-10. Beneficiary competent witness; when interest rendered void.**

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

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

41
42 **§ 31-10.1. Corporate trustee not disqualified by witnessing of will by stockholder.**

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

45
46 Article 4.
47 Depository for Wills.

48 **§ 31-11. Depositories in offices of clerks of superior court where living persons may file**
49 **wills.**

50 The clerk of the superior court in each county of North Carolina shall be required to keep a
51 receptacle or depository in which any person who desires to do so may file that person's will for

1 safekeeping; and the clerk shall, upon written request of the testator, or the duly authorized
2 agent or attorney for the testator, permit said will or testament to be withdrawn from said
3 depository or receptacle at any time prior to the death of the testator: Provided, that the contents
4 of said will shall not be made public or open to the inspection of anyone other than the testator
5 or the testator's duly authorized agent until such time as the said will shall be offered for
6 probate. (1937, c. 435, s. 1; 1971, c. 528, s. 28; 2011-344, s. 8.)

7
8 **§§ 31-11.1 through 31-11.5. Reserved for future codification purposes.**

9
10 Article 4A.
11 Self-Proved Wills.

12 **§ 31-11.6. How attested wills may be made self-proved.**

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

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

23 _____
24 Testator

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

31 _____
32 Witness

33 _____
34 Witness

35 THE STATE OF _____.

36 COUNTY OF _____.

37 Subscribed, sworn to and acknowledged before me by _____ the testator and
38 subscribed and sworn to before me by _____ and _____, witnesses, this ____ day of

39 _____
40 (SEAL)

41 (SIGNED) _____
42 (OFFICIAL CAPACITY OF OFFICER)"
43

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

49
50 "STATE OF NORTH CAROLINA

51 "COUNTY/CITY OF _____

1 "Before me, the undersigned authority, on this day personally appeared _____, and
2 _____, known to me to be the testator and the witnesses, respectively, whose names are
3 signed to the attached or foregoing instrument and, all of these persons being by me first duly
4 sworn. The testator, declared to me and to the witnesses in my presence: That said instrument is
5 his last will; that he had willingly signed or directed another to sign the same for him, and
6 executed it in the presence of said witnesses as his free and voluntary act for the purposes
7 therein expressed; or, that the testator signified that the instrument was his instrument by
8 acknowledging to them his signature previously affixed thereto.

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

14 _____
15 Testator

16 _____
17 Witness

18 _____
19 Witness

20 _____
21 Witness

22 Subscribed, sworn and acknowledged before me by _____, the testator, subscribed and
23 sworn before me by _____, _____ and _____ witnesses, this ____ day of _____,
24 A.D. _____

25 (SEAL)

26 (SIGNED) _____

27
28 (OFFICIAL CAPACITY OF OFFICER)"
29

30 (c) The sworn statement of any such witnesses taken as herein provided shall be
31 accepted by the court as if it had been taken before such court. (1977, c. 795, s. 1; 1979, c. 536,
32 s. 1; 1981, c. 599, s. 8; 1999-456, s. 59.)
33

34 Article 5.

35 Probate of Will.

36 **§§ 31-12 through 31-31.2:** Recodified as Article 2A of Chapter 28A of the General Statutes,
37 G.S. 28A-2A-1 through G.S. 28A-2A-23, by Session Laws 2011-344, s. 3, effective
38 January 1, 2012, and applicable to estates of decedents dying on or after that date.
39

40 **§ 31-18:** Rewritten and renumbered as G.S. 31-18.1 to 31-18.3 by Session Laws 1953, c. 1098,
41 s. 12.
42

43 **§§ 31-12 through 31-31.2:** Recodified as Article 2A of Chapter 28A of the General Statutes,
44 G.S. 28A-2A-1 through G.S. 28A-2A-23, by Session Laws 2011-344, s. 3, effective
45 January 1, 2012, and applicable to estates of decedents dying on or after that date.
46

47 **§§ 31-25 through 31-25.1:** Repealed by Session Laws 1987, c. 78, s. 1.
48

49 **§ 31-26:** Renumbered as G.S. 31-18.4 by Session Laws 1953, c. 1098, s. 13.
50

1
2 **§ 31-35. Affidavit of witness as evidence.**

3 Whenever the subscribing witness to any will shall die, or be mentally incompetent, or be
4 absent beyond the State, it shall be competent upon any issue of devisavit vel non to give in
5 evidence the affidavits and proofs taken by the clerk upon admitting the will to probate in
6 common form, and such affidavit and proceedings before the clerk shall be prima facie
7 evidence of the due and legal execution of said will. (1899, c. 680, s. 2; Rev., s. 3121; C.S., s.
8 4160; 1947, c. 781; 2011-344, s. 8.)
9

10 **§ 31-36. Effect of caveat on estate administration.**

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

- 14 (1) Distributions to beneficiaries. – That there shall be no distributions of assets
15 of the estate to any beneficiary;
16 (2) Commissions. – That no commissions shall be advanced or awarded to any
17 personal representative;
18 (3) Accountings. – That the personal representative shall file all accountings
19 required by the clerk of superior court and that the personal representative
20 may pay any applicable filing fees associated with those accountings from
21 the assets of the estate;
22 (4) Preservation of estate assets. – That the personal representative shall
23 preserve the property of the estate and that the personal representative is
24 authorized to pursue and prosecute claims that the estate may have against
25 others; and
26 (5) Taxes, claims and debts of estate. – That the personal representative may file
27 all appropriate tax returns and that the personal representative may pay, in
28 accordance with the procedures of subsection (b) of this section: taxes;
29 funeral expenses of the decedent; debts that are a lien upon the property of
30 the decedent; bills of the decedent accrued before death; claims against the
31 estate that are timely filed; professional fees related to administration of the
32 estate, including fees for tax return preparation, appraisal fees, and attorneys'
33 fees for estate administration.

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

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

1
2 § 31-37: Repealed by Session Laws 2011-344, s. 8, effective January 1, 2012, and applicable
3 to estates of decedents dying on or after that date.
4

5 **§ 31-37.1. Settlement agreement; filing of judgment.**

6 (a) Prior to an entry of judgment by the superior court in a caveat proceeding, the
7 parties may enter into a settlement agreement, which must be approved by the superior court.
8 Upon approval of a settlement agreement, the court shall enter judgment, without a verdict by a
9 jury, in accordance with the terms of the settlement agreement. The consent of interested
10 parties who are not aligned as parties pursuant to G.S. 31-33 is not necessary for a settlement
11 agreement under this section.

12 (b) When judgment is entered by the superior court in a caveat proceeding, the clerk of
13 superior court shall file a copy of the judgment in the estate file and shall make entry upon the
14 page of the will book where such will is recorded to the effect that final judgment has been
15 entered, either sustaining or setting aside the will. (1989 (Reg. Sess., 1990), c. 949, s. 1;
16 2011-344, s. 8.)
17

18 Article 7.

19 Construction of Will.

20 **§ 31-38. Devise presumed to be in fee.**

21 When real estate shall be devised to any person, the same shall be held and construed to be
22 a devise in fee simple, unless such devise shall, in plain and express words, show, or it shall be
23 plainly intended by the will, or some part thereof, that the testator intended to convey an estate
24 of less dignity. (1784, c. 204, s. 12; R.C., c. 119, s. 26; Code, s. 2180; Rev., s. 3138; C.S., s.
25 4162.)
26

27 **§ 31-39. Probate necessary to pass title; recordation in county where land lies; rights of
28 innocent purchasers.**

29 No will shall be effectual to pass real or personal estate unless it shall have been duly
30 proved and allowed in the probate court of the proper county, and a duly certified copy thereof
31 shall be recorded in the office of the superior court clerk of the county wherein the land is
32 situate, and the probate of a will devising real estate shall be conclusive as to the execution
33 thereof against the heirs and devisees of the testator, whenever the probate thereof under the
34 like circumstances, would be conclusive against the next of kin and legatees of the testator:
35 Provided, that the probate and registration of any will shall not affect the rights of innocent
36 purchasers for value from the heirs at law of the testator when such purchase is made more than
37 two years after the death of such testator or when such purchase is made after the filing of the
38 final account by the duly authorized administrator of the decedent and the approval thereof by
39 the clerk of the superior court having jurisdiction of the estate. Such conveyances, if made
40 before the expiration of the time required by this section to have elapsed in order for same to be
41 valid against the heirs and devisees of the testator, shall, upon the expiration of such time,
42 become good and valid to the same effect as if made after the expiration of such time, unless in
43 the meantime a proceeding shall have been instituted in the proper court to probate the will of
44 the testator. (1784, c. 225, s. 6; R.C., c. 119, s. 20; Code, s. 2174; Rev., s. 3139; 1915, c. 219;
45 C.S., s. 4163; 1953, c. 920, s. 1.)
46

47 **§ 31-40. What property passes by will.**

48 Any testator, by the testator's a will duly executed, may devise or dispose of all real and
49 personal property which the testator shall be entitled to at the time of the testator's death, and
50 which, if not so devised or disposed of, would descend or devolve upon the testator's heirs at
51 law, or upon the testator's personal representative; and the power hereby given shall extend to

1 all contingent, executory, or other future interest in any real or personal property, whether the
2 testator may or may not be the person or one of the persons in whom the same may become
3 vested, or whether the testator may be entitled thereto under the instrument by which the same
4 was created, or under any disposition thereof by deed or will; and also to all rights of entry for
5 conditions broken, whether any such condition has or has not been broken at the testator's
6 death, all other rights of entry, and possibilities of reverter; and also to such of the same estates,
7 interests, and rights respectively, and other real and personal property, as the testator may be
8 entitled to at the time of the testator's death, notwithstanding that the testator may become
9 entitled to the same subsequently to the execution of the testator's will. (1844, c. 88, s. 1; R.C.,
10 c. 119, s. 5; Code, s. 2140; Rev., s. 3140; C.S., s. 4164; 1973, c. 1446, s. 15; 2011-284, s. 33;
11 2011-344, s. 8.)
12

13 **§ 31-41. Will relates to death of testator.**

14 Every will shall be construed, with reference to the real and personal estate comprised
15 therein, to speak and take effect as if it had been executed immediately before the death of the
16 testator, unless a contrary intention shall appear by the will. (1844, c. 88, s. 3; R.C., c. 119, s.
17 16; Code, s. 2141; Rev., s. 3141; C.S., s. 4165.)
18

19 **§ 31-42. Failure of devises by lapse or otherwise; renunciation; 120-hour survivorship
20 requirement, revised simultaneous death act, Article 24, Chapter 28A.**

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

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

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

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

41 (d) As used in this section, "devisee" means any person entitled to take real or personal
42 property under the provisions of a will. (1844, c. 88, s. 4; R.C., c. 119, s. 7; Code, s. 2142;
43 Rev., s. 3142; 1919, c. 28; C.S., s. 4166; 1951, c. 762, s. 1; 1953, c. 1084; 1965, c. 938, s. 1;
44 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,
45 s. 1; 2007-132, ss. 3(a), (b).)
46

47 **§§ 31-42.1 through 31-42.2. Repealed by Session Laws 1965, c. 938, s. 2.**

48
49 **§ 31-43. When a general gift by will operates as an exercise of power of appointment.**

50 A general devise of the real property of the testator, or of the testator's real property in any
51 place or in the occupation of any person mentioned in the will, or otherwise described in a

1 general manner, shall be construed to include any real property, or any real property to which
2 such description shall extend, as the case may be, which the testator may have power to appoint
3 in any manner the testator may think proper; and shall operate as an exercise of such power,
4 unless a contrary intention shall appear by the will; and in like manner a devise of the personal
5 property of the testator, or any devise of personal property, described in a general manner, shall
6 be construed to include any personal property, or any personal property to which such
7 description shall extend, as the case may be, which the testator may have power to appoint in
8 any manner the testator may think proper, and shall operate as an exercise of such power,
9 unless a contrary intention shall appear by the will. (1844, c. 88, s. 5; R.C., c. 119, s. 8; Code,
10 s. 2143; Rev., s. 3143; C.S., s. 4167; 2011-284, s. 34; 2011-344, s. 8.)

11
12 **§ 31-44. Repealed by Session Laws 1951, c. 762, s. 2.**

13
14 **§ 31-45:** Rewritten and renumbered as G.S. 31-5.5 by Session Laws 1953, c. 1098, s. 7.

15
16 **§ 31-46. Validity of will; which laws govern.**

17 A will is valid if it meets the requirements of the applicable provisions of law in effect in
18 this State either at the time of its execution or at the time of the death of the testator. (1953, c.
19 1098, s. 14.)

20
21 **§ 31-46.1. Construction of certain formula clauses applicable to estates of decedents**
22 **dying in calendar year 2010.**

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

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

30 (1) To a will or codicil executed by a decedent before December 31, 2009, that
31 contains a formula provision described in subsection (c) of this section if the
32 decedent dies after December 31, 2009, and before the earlier of January 1,
33 2011, and the effective date of the reinstatement of the federal estate tax and
34 generation-skipping transfer tax, unless the will or codicil clearly manifests
35 an intent that a rule contrary to the rule of construction described in
36 subsection (c) of this section applies.

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

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

50 (1) The formula refers to any of the following: "applicable credit amount,"
51 "applicable exclusion amount," "applicable exemption amount," "applicable

1 fraction," "estate tax exemption," "generation-skipping transfer tax
2 exemption," "GST exemption," "inclusion ratio," "marital deduction,"
3 "maximum marital deduction," "unified credit," or "unlimited marital
4 deduction."

5 (2) The formula measures a share of an estate or trust based on the amount that
6 can pass free of federal estate taxes or the amount that can pass free of
7 federal generation-skipping transfer taxes.

8 (3) The formula is otherwise based on a provision of federal estate tax or federal
9 generation-skipping transfer tax law similar to the provisions in subdivision
10 (1) or (2) of this subsection.

11 (d) **Judicial Determination.** – The personal representative or an affected beneficiary
12 under a will or testamentary trust may bring an action in the superior court division of the
13 General Court of Justice under Article 26 of Chapter 1 of the General Statutes, and the trustee
14 of a trust created under the will or an affected beneficiary under the trust may bring a
15 proceeding as permitted under Article 2 of Chapter 36C of the General Statutes to determine
16 whether the decedent intended that the references under subsection (c) of this section be
17 construed with respect to the federal law as it existed after December 31, 2009. The action must
18 be commenced within 12 months following the death of the decedent. (2010-126, s. 1.)
19

20 Article 8.

21 Testamentary Additions to Trusts.

22 **§ 31-47. Testamentary additions to trusts.**

23 (a) A will may validly devise property to:

24 (1) The trustee of a trust established before the testator's death by the testator, by
25 the testator and some other person, or by some other person, including a trust
26 authorized by G.S. 36C-4-401.1; or

27 (2) The trustee of a trust to be established at the testator's death, if the trust is
28 identified in the testator's will and its terms are set forth in a written
29 instrument executed before or concurrently with the execution of the
30 testator's will, regardless of the existence, size, or character of the corpus of
31 the trust during the testator's lifetime.

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

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

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

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

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

49 (f) Nothing in this section alters, amends, or in any manner affects the application of
50 the doctrine of acts of independent significance. (1955, c. 388; 1957, c. 783, s. 1; 1975, c. 161;
51 2007-184, s. 1.)

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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.)