

Article 4.

Year's Allowance.

Part 1. Nature of Allowance.

§ 30-15. When spouse entitled to allowance.

Every surviving spouse of an intestate or of a testator, whether or not the surviving spouse has petitioned for an elective share, shall, unless the surviving spouse has forfeited the surviving spouse's right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of thirty thousand dollars (\$30,000) for the surviving spouse's support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse. (1868-9, c. 93, s. 81; 1871-2, c. 193, s. 44; 1880, c. 42; Code, s. 2116; 1889, c. 499, s. 2; Rev., s. 3091; C.S., s. 4108; 1953, c. 913, s. 1; 1961, c. 316, s. 1; c. 749, s. 1; 1969, c. 14; 1981, c. 413, s. 1; 1995, c. 262, s. 4; 2000-178, s. 4; 2009-183, s. 1; 2011-344, s. 7; 2013-81, s. 1.)

§ 30-16. Duty of personal representative, magistrate, or clerk to assign allowance.

It shall be the duty of every administrator, collector, or executor of a will, on application in writing, signed by the surviving spouse, at any time within one year after the death of the deceased spouse, to assign to the surviving spouse the year's allowance as provided in this Article.

If there shall be no administration, or if the personal representative shall fail or refuse to apply to a magistrate or clerk of court, as provided in G.S. 30-20, for 10 days after the surviving spouse has filed the aforesaid application, or if the surviving spouse is the personal representative, the surviving spouse may make application to the magistrate or clerk, and it shall be the duty of the magistrate or clerk to proceed in the same manner as though the application had been made by the personal representative.

Where any personal property of the deceased spouse shall be located outside the township or county where the deceased spouse resided at the time of the deceased spouse's death, the personal representative or the surviving spouse may apply to any magistrate or to any clerk of court of any township or county where such personal property is located, and it shall be the duty of such magistrate or clerk to assign the year's allowance as if the deceased spouse had resided and died in that township. (1868-9, c. 93, s. 12; 1870-1, c. 263; Code, ss. 2120, 2122; 1889, cc. 496, 531; 1891, c. 13; Rev., ss. 3096, 3098; C.S., ss. 4113, 4115; 1961, c. 749, s. 2; 1971, c. 528, s. 21; 1997-310, s. 1; 2011-344, s. 7.)

§ 30-17. When children entitled to an allowance.

Whenever any parent dies survived by any child under the age of 18 years, including an adopted child or a child with whom the widow may be pregnant at the death of her husband, or a child who is less than 22 years of age and is a full-time student in any educational institution, or a child under 21 years of age who has been declared mentally incompetent, or a child under 21 years of age who is totally disabled, or any other person under the age of 18 years residing with the deceased parent at the time of death to whom the deceased parent or the surviving parent stood in loco parentis, every such child shall be entitled to receive an allowance of five thousand dollars (\$5,000) for the child's support for the year next ensuing the death of the parent. The allowance shall be in addition to the child's share of the deceased parent's estate and shall be exempt from any lien by judgment or execution against the property of the deceased parent. The

personal representative of the deceased parent shall, within one year after the parent's death, assign to every such child the allowance herein provided for; but if there is no personal representative or if the personal representative fails or refuses to act within 10 days after written application by a guardian or next friend on behalf of the child, the allowance may be assigned by a magistrate or clerk of court upon application.

If the child resides with the surviving spouse of the deceased parent at the time the allowance is paid, the allowance shall be paid to the surviving spouse for the benefit of the child. If the child resides with its surviving parent who is other than the surviving spouse of the deceased parent, the allowance shall be paid to the surviving parent for the use and benefit of the child. The payment shall be made regardless of whether the deceased died testate or intestate or whether the surviving spouse petitioned for an elective share under Article 1A of Chapter 30 of the General Statutes. Provided, however, the allowance shall not be available to a deceased father's child born out of wedlock, unless the deceased father has recognized the paternity of the child by deed, will, or other paper-writing, or unless the deceased father died prior to or within one year after the birth of the child and is established to have been the father of the child by DNA testing. If the child does not reside with a surviving spouse or a surviving parent when the allowance is paid, the allowance shall be paid to the child's general guardian, if any, and if none, to the clerk of the superior court who shall receive and disburse the allowance for the benefit of the child. (1889, c. 496; Rev., s. 3094; C.S., s. 4111; 1939, c. 396; 1953, c. 913, s. 2; 1961, c. 316, s. 2; c. 749, s. 3; 1969, c. 269; 1971, c. 528, s. 22; 1973, c. 1411; 1975, c. 259; 1981, c. 413, s. 2; c. 599, s. 7; 1995, c. 262, s. 5; 1997-310, s. 2; 2005-225, s. 1; 2011-344, s. 7; 2012-71, ss. 2(a), 3; 2013-198, s. 13.)

§ 30-18. From what property allowance assigned.

Such allowance shall be made in money or other personal property of the estate of the deceased spouse. (1868-9, c. 93, s. 9; Code, s. 2117; Rev., s. 3095; C.S., s. 4112; 1925, c. 92; 1961, c. 749, s. 4.)

Part 2. Assigned by Magistrate or Clerk.

§ 30-19. Value of property ascertained.

The value of the personal property assigned to the surviving spouse and children shall be ascertained by a magistrate or the clerk of court of the county in which administration was granted or the will probated. (1868-9, c. 93, s. 13; Code, s. 2121; Rev., s. 3097; C.S., s. 4114; 1961, c. 749, s. 5; 1971, c. 528, s. 22; 1989, c. 11, s. 1; 1997-310, s. 3.)

§ 30-20. Procedure for assignment.

Upon the application of the surviving spouse, a child by the child's guardian or next friend, or the personal representative of the deceased, the clerk of superior court of the county in which the deceased resided may assign the inquiry to a magistrate of the county. The clerk of court, or magistrate upon assignment, shall ascertain the person or persons entitled to an allowance according to the provisions of this Article, and determine the money or other personal property of the estate, and pay over to or assign to the surviving spouse and to the children, if any, so much thereof as they shall be entitled to as provided in this Article. Any deficiencies shall be made up from any of the personal property of the deceased, and if the personal property of the estate shall be insufficient to satisfy the allowance, the clerk of the superior court shall enter judgment against the personal representative for the amount of the deficiency, to be paid when a

sufficiency of such assets shall come into the personal representative's hands. (1870-1, c. 263; Code, s. 2122; 1891, c. 13; 1899, c. 531; Rev., s. 3098; C.S., s. 4115; 1961, c. 749, s. 6; 1971, c. 528, s. 23; 1989, c. 11, s. 2; 1997-310, s. 3; 2011-344, s. 7; 2012-71, s. 2(b).)

§ 30-21. Report of clerk or magistrate.

The clerk of court, or magistrate upon assignment, shall make and sign three lists of the money or other personal property assigned to each person, stating their quantity and value, and the deficiency to be paid by the personal representative. Where the allowance is to the surviving spouse, one of these lists shall be delivered to the surviving spouse. Where the allowance is to a child, one of these lists shall be delivered to the surviving parent with whom the child is living; or to the child's guardian or next friend if the child is not living with the surviving parent; or to the child if the child is not living with the surviving parent and has no guardian or next friend. One list shall be delivered to the personal representative. One list shall be returned by the magistrate or clerk, within 20 days after the assignment, to the superior court of the county in which administration was granted or the will probated, and the clerk shall file and record the list, together with any judgment entered pursuant to G.S. 30-20. (1868-9, c. 93, s. 15; Code, s. 2123; Rev., s. 3099; C.S., s. 4116; 1961, c. 749, s. 7; 1971, c. 528, s. 24; 1989, c. 11, s. 3; 1997-310, s. 3; 2011-344, s. 7; 2012-71, s. 2(c).)

§ 30-22. Repealed by Session Laws 1971, c. 528, s. 25.

§ 30-23. Right of appeal.

The personal representative, or the surviving spouse, or child by a the child's guardian or next friend, or any creditor, devisee, or heir of the deceased, may appeal from the finding of the magistrate or clerk of court to the superior court of the county, by filing a copy of the assignment and a notice of appeal within 10 days after the assignment, and the appeal shall be heard as provided in G.S. 1-301.2, provided that the hearing on the appeal shall be at the next available session of superior court. (1868-9, c. 93, s. 16; Code, s. 2124; 1897, c. 442; Rev., s. 3100; C.S., s. 4117; 1961, c. 749, s. 9; 1989, c. 11, s. 4; 1997-310, s. 3; 2011-284, s. 23; 2011-344, s. 7; 2012-71, s. 2(d).)

§ 30-24: Repealed by Session Laws 2011-344, s. 7, effective January 1, 2012, and applicable to estates of decedents dying on or after that date.

§ 30-25. Personal representative entitled to credit.

Upon the settlement of the accounts of the personal representative, the personal representative shall be credited with the articles assigned, and the value of the deficiency assessed as aforesaid, if the same shall have been paid, unless the allowance be impeached for fraud or gross negligence in him. (1868-9, c. 93, s. 18; Code, s. 2126; Rev., s. 3102; C.S., s. 4119; 1997, c. 310, s. 3; 2011-344, s. 7.)

§ 30-26: Repealed by Session Laws 2011-344, s. 7, effective January 1, 2012, and applicable to estates of decedents dying on or after that date.

Part 3. Assigned in Superior Court.

§ 30-27. Surviving spouse or child may apply to superior court.

In addition to any support otherwise assigned to the surviving spouse or child under this Article, without application to the personal representative, the surviving spouse, or the child through the child's guardian or next friend may, after the date specified in the general notice to creditors as provided for in G.S. 28A-14-1(a), and within one year after the decedent's death, apply to the superior court of the county in which administration was granted or the will probated to have a year's support assigned at an amount other than prescribed in G.S. 30-15 and G.S. 30-17. (1868-9, c. 93, s. 20; Code, s. 2128; Rev., s. 3104; C.S., s. 4121; 1961, c. 749, s. 11; 2011-344, s. 7; 2012-71, s. 2(e).)

§ 30-28. Nature of proceeding; parties.

The application shall be by petition in a special proceeding before the clerk of superior court. The personal representative of the deceased, if there is one other than the petitioner, all known creditors, and all known heirs of the deceased, if the deceased is intestate, and devisees of the deceased, if the deceased is testate, shall be made parties to the special proceeding. If the personal representative of the deceased is aware of a creditor, heir, or devisee who should have been made a respondent but was not, then the personal representative shall file a motion to add the creditor, heir, or devisee as a necessary party, and the court shall order such other party to appear in the proceeding.

devisee (1868-9, c. 93, s. 21; Code, s. 2129; Rev., s. 3105; C.S., s. 4122; 2011-284, s. 24; 2011-344, s. 7.)

§ 30-29. What petition must show.

In the petition the petitioner shall set forth, besides the facts entitling petitioner to a year's support and the value of the support claimed, the further facts that the personal estate of which the decedent died possessed exceeded thirty thousand dollars (\$30,000), and also whether or not an allowance has been made to petitioner and the nature and value thereof. (1868-9, c. 93, s. 22; Code, s. 2130; Rev., s. 3106; C.S., s. 4123; 1961, c. 749, s. 12; 1981, c. 413, s. 4; 1995, c. 262, s. 7; 2009-183, s. 3; 2011-344, s. 7; 2013-81, s. 2.)

§ 30-30. Judgment.

The clerk of superior court shall hear the matter and determine whether the petitioner is entitled to some or all of the relief sought and, if the clerk determines that the petitioner is so entitled, the clerk shall determine the money or other personal property of the estate and assign to the petitioner a sufficiency thereof for petitioner's support for one year from the decedent's death. Any deficiency shall be made up from any of the personal property of the deceased, and if the personal property of the estate shall be insufficient for such support, the clerk of superior court shall enter judgment against the personal representative for the amount of such deficiency, to be paid when a sufficiency of such assets shall come into the personal representative's hands. Any judgment so rendered shall have the same priority over other debts and claims against the estate as an allowance assigned pursuant to G.S. 30-15 or G.S. 30-17. (1868-9, c. 93, s. 23; Code, s. 2131; Rev., s. 3107; C.S., s. 4124; 1961, c. 749, s. 13; 1971, c. 528, s. 26; 2011-344, s. 7; 2012-194, s. 14.)

§ 30-31. Amount of allowance.

The clerk of superior court may assign to the petitioner a value sufficient for the support of petitioner according to the estate and condition of the decedent and without regard to the

limitations set forth in this Chapter; but the value allowed shall be fixed with due consideration for other persons entitled to allowances for year's support from the decedent's estate; and the total value of all allowances shall not in any case exceed the one half of the average annual net income of the deceased for three years next preceding the deceased's death. Attorneys' fees and costs awarded the petitioner under G.S. 6-21 shall be paid as an administrative expense of the estate. (1868-9, c. 93, s. 24; Code, s. 2132; Rev., s. 3108; C.S., s. 4125; 1971, c. 528, s. 27; 2011-344, s. 7; 2012-18, s. 3.10; 2013-91, s. 1(e).)

§ 30-31.1. Service of judgment and appeal.

The petitioner shall serve the clerk's judgment on all other parties. The judgment also shall be filed in the estate file of the deceased. Any aggrieved party may appeal the judgment in accordance with G.S. 1-301.2. (2011-344, s. 7.)

§ 30-31.2. Execution.

If the clerk's judgment is not appealed as provided in G.S. 1-301.2, execution shall issue to enforce the judgment as in like cases under Article 28 of Chapter 1 of the General Statutes. (2011-344, s. 7.)

§ 30-32: Repealed by Session Laws 2012-194, s. 40, effective July 17, 2012.

§ 30-33: Repealed by Session Laws 2011-344, s. 7, effective January 1, 2012, and applicable to estates of decedents dying on or after that date.