

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.