

## Article 2.

### Legitimation of Children Born Out of Wedlock.

#### **§ 49-10. Legitimation.**

The putative father of any child born out of wedlock, whether such father resides in North Carolina or not, may apply by a verified written petition, filed in a special proceeding in the superior court of the county in which the putative father resides or in the superior court of the county in which the child resides, praying that such child be declared legitimate. The mother, if living, and the child shall be necessary parties to the proceeding, and the full names of the father, mother and the child shall be set out in the petition. A certified copy of a certificate of birth of the child shall be attached to the petition. If it appears to the court that the petitioner is the father of the child, the court may thereupon declare and pronounce the child legitimated; and the full names of the father, mother and the child shall be set out in the court order decreeing legitimation of the child. The clerk of the court shall record the order in the record of orders and decrees and it shall be cross-indexed under the name of the father as plaintiff or petitioner on the plaintiff's side of the cross-index, and under the name of the mother, and the child as defendants or respondents on the defendants' side of the cross-index. (Code, s. 39; Rev., s. 263; C.S., s. 277; 1947, c. 663, s. 1; 1971, c. 154; 1977, c. 83, s. 1.)

#### **§ 49-11. Effects of legitimation.**

The effect of legitimation under G.S. 49-10 shall be to impose upon the father and mother all of the lawful parental privileges and rights, as well as all of the obligations which parents owe to their lawful issue, and to the same extent as if said child had been born in wedlock, and to entitle such child by succession, inheritance or distribution, to take real and personal property by, through, and from his or her father and mother as if such child had been born in lawful wedlock. In case of death and intestacy, the real and personal estate of such child shall descend and be distributed according to the Intestate Succession Act as if he had been born in lawful wedlock. (Code, s. 40; Rev., s. 264; C.S., s. 278; 1955, c. 540, s. 2; 1959, c. 879, s. 10; 1963, c. 1131.)

#### **§ 49-12. Legitimation by subsequent marriage.**

When the mother of any child born out of wedlock and the reputed father of such child shall intermarry or shall have intermarried at any time after the birth of such child, the child shall, in all respects after such intermarriage be deemed and held to be legitimate and the child shall be entitled, by succession, inheritance or distribution, to real and personal property by, through, and from his father and mother as if such child had been born in lawful wedlock. In case of death and intestacy, the real and personal estate of such child shall descend and be distributed according to the Intestate Succession Act as if he had been born in lawful wedlock. (1917, c. 219, s. 1; C.S., s. 279; 1947, c. 663, s. 2; 1955, c. 540, s. 3; 1959, c. 879, s. 11.)

#### **§ 49-12.1. Legitimation when mother married.**

(a) The putative father of a child born to a mother who is married to another man may file a special proceeding to legitimate the child. The procedures shall be the same as those specified by G.S. 49-10, except that the spouse of the mother of the child shall be a necessary party to the proceeding and shall be properly served. A guardian ad litem shall be appointed to represent the child if the child is a minor.

(b) The presumption of legitimacy can be overcome by clear and convincing evidence.

(c) The parties may enter a consent order with the approval of the clerk of superior court. The order entered by the clerk shall find the facts and declare the proper person the father of the child and may change the surname of the child after determination that the change is in the best interests of the child.

(d) The effect of legitimation under this section shall be the same as provided by G.S. 49-11.

(e) A certified copy of the order of legitimation under this section shall be sent by the clerk of superior court under his official seal to the State Registrar of Vital Statistics who shall make a new birth certificate bearing the full name of the father of the child and, if ordered by the clerk after determination that the change is in the best interests of the child, changing the surname of the child. (1991, c. 667, s. 2; 1991 (Reg. Sess., 1992), c. 1030, s. 15; 1997-433, s. 4.9; 1998-17, s. 1; 2019-42, s. 1.)

**§ 49-13. New birth certificate on legitimation.**

A certified copy of the order of legitimation when issued under the provisions of G.S. 49-10 shall be sent by the clerk of the superior court under his official seal to the State Registrar of Vital Statistics who shall then make the new birth certificate bearing the full name of the father. The surname of the child shall remain the same except if the mother and father agree and request that the child's surname be changed under G.S. 130A-118 or the court orders a change in surname after determination that the change is in the best interests of the child.

When a child is legitimated under the provisions of G.S. 49-12, the State Registrar of Vital Statistics shall make a new birth certificate bearing the full name of the father upon presentation of a certified copy of the certificate of marriage of the father and mother. The surname of the child shall remain the same except if the mother and father agree and request the child's surname be changed under G.S. 130A-118. (1947, c. 663, s. 3; 1955, c. 951, s. 2; 2019-42, s. 2.)

**§ 49-13.1:** Repealed by Session Laws 2004-203, s. 3, effective August 17, 2004.