

Chapter 30.
Surviving Spouses.

ARTICLE 1.

Dissent from Will.

§§ 30-1 through 30-3: Repealed by Session Laws 2000-178, s. 1.

Article 1A.

Elective Share.

§ 30-3.1. Right of elective share.

(a) Elective Share. – The surviving spouse of a decedent who dies domiciled in this State has a right to claim an "elective share", which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(4), less (ii) the value of Net Property Passing to Surviving Spouse, as defined in G.S. 30-3.2(2c). The applicable share of the Total Net Assets is as follows:

- (1) If the surviving spouse was married to the decedent for less than five years, fifteen percent (15%) of the Total Net Assets.
- (2) If the surviving spouse was married to the decedent for at least five years but less than 10 years, twenty-five percent (25%) of the Total Net Assets.
- (3) If the surviving spouse was married to the decedent for at least 10 years but less than 15 years, thirty-three percent (33%) of the Total Net Assets.
- (4) If the surviving spouse was married to the decedent for 15 years or more, fifty percent (50%) of the Total Net Assets.

(b) Repealed by Session Laws 2013-91, s. 1(d), effective October 1, 2013, and applicable to estates of decedents dying on or after October 1, 2013.

(c) Repealed by Session Laws 2009-368, s. 1, effective August 27, 2009, and applicable to decedents dying on or after October 1, 2009. (2000-178, s. 2; 2003-296, s. 1; 2009-368, s. 1; 2013-91, s. 1(d).)

§ 30-3.2. Definitions.

The following definitions apply in this Article:

- (1) Claims. – Includes liabilities of the decedent, whether arising in contract, in tort, or otherwise, and liabilities of the decedent's estate that arise at or after the death of the decedent, including funeral and administrative expenses, except for:
 - a. A claim for equitable distribution of property pursuant to G.S. 50-20 awarded subsequent to the death of the decedent.
 - b. Death taxes, except for those death taxes attributable to Property Passing to the Surviving Spouse. "Death taxes attributable to Property Passing to the Surviving Spouse" equals the amount of decedent's death taxes as finally determined, less the amount such death taxes would have been if all Property Passing to the Surviving Spouse had qualified for the federal estate tax marital deduction pursuant to

section 2056 of the Code or had qualified for a similar provision under the laws of another applicable taxing jurisdiction.

- c. A claim founded on a promise or agreement of the decedent, to the extent such claim is not arm's length or is not supported by full or adequate consideration in money or money's worth.
 - d. Expenses apportioned by the clerk of court under G.S. 30-3.4(h).
- (1a) Code. – The Internal Revenue Code in effect at the time of the decedent's death.
 - (2) Death taxes. – Any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.
 - (2a) General power of appointment. – Any power of appointment, including a power to designate the beneficiary of a beneficiary designation, exercisable by the decedent, regardless of the decedent's capacity to exercise such power, in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except for (i) powers limited by an "ascertainable standard" as defined in G.S. 36C-1-103 and (ii) powers which are not exercisable by the decedent except in conjunction with a person who created the power or has a substantial interest in the property subject to the power and whose interest is adverse to the exercise of the power in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate. In no event shall a power held by the decedent as attorney-in-fact under a power of attorney be considered a general power of appointment.
 - (2b) Lineal descendant. – Defined in G.S. 29-2.
 - (2c) Net Property Passing to Surviving Spouse. – The Property Passing to Surviving Spouse reduced by (i) death taxes attributable to property passing to surviving spouse, and (ii) claims payable out of, charged against or otherwise properly allocated to Property Passing to Surviving Spouse.
 - (3) Nonadverse trustee. – Any of the following:
 - a. Any person who does not possess a substantial beneficial interest in the trust that would be adversely affected by the exercise or nonexercise of the power that the individual trustee possesses respecting the trust;
 - b. Any person subject to a power of removal by the surviving spouse with or without cause; or
 - c. Any company authorized to engage in trust business under the laws of this State, or that otherwise meets the requirements to engage in trust business under the laws of this State.
 - (3a) Nonspousal assets. – All property included in total assets other than the property included in Property Passing to Surviving Spouse.
 - (3b) Presently exercisable general power of appointment. – A general power of appointment which is exercisable at the time in question. A testamentary general power of appointment is not presently exercisable.
 - (3c) Property Passing to Surviving Spouse. – The sum of the values, as valued pursuant to G.S. 30-3.3A, of the following:

- a. Property (i) devised, outright or in trust, by the decedent to the surviving spouse or (ii) that passes, outright or in trust, to the surviving spouse by intestacy, beneficiary designation, the exercise or failure to exercise the decedent's testamentary general power of appointment or the decedent's testamentary limited power of appointment, operation of law, or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system.
 - b. Any year's allowance awarded to the surviving spouse.
 - c. Property renounced by the surviving spouse.
 - d. The surviving spouse's interest in any life insurance proceeds on the life of the decedent.
 - e. Any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of the decedent for which the surviving spouse signs a statement acknowledging such a gift. For purposes of this sub-subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be deemed to be a gift of one-half of the entire interest in property so held by the decedent and the surviving spouse.
 - f. Property awarded to the surviving spouse, subsequent to the death of the decedent, pursuant to an equitable distribution claim under G.S. 50-20.
 - g. Property held in a spousal trust described in G.S. 30-3.3A(e)(1).
If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.
- (3d) Responsible person. – A person or entity other than the surviving spouse that received, held, or controlled property constituting nonspousal assets on the date used to determine the value of the property. The personal representative is the responsible person for nonspousal assets that pass under the decedent's will or by intestate succession.
- (3e) Responsible person's nonspousal assets. – The nonspousal assets received, held, or controlled by a responsible person.
- (3f) Total assets. – The sum of the values, as determined pursuant to G.S. 30-3.3A, of the following:
- a. The decedent's property that would pass by intestate succession if the decedent died without a will, other than wrongful death proceeds;
 - b. Property over which the decedent, immediately before death, held a presently exercisable general power of appointment, except for (i) property held jointly with right of survivorship, which is includable in total assets only to the extent provided in sub-subdivision c. of this subdivision and (ii) life insurance, which is includable in Total Assets only to the extent provided in sub-subdivision d. of this subdivision.
Includes, without limitation:
 - 1. Property held in a trust that the decedent could revoke.

2. Property held in a trust to the extent that the decedent had an unrestricted power to withdraw the property.
 3. Property held in a depository account owned by the decedent in a financial institution payable or transferable at decedent's death to a beneficiary designated by the decedent.
 4. Securities owned by the decedent in an account or in certificated form that are payable or transferable at decedent's death to a beneficiary designated by the decedent.
- c. Property held as tenants by the entirety or jointly with right of survivorship as follows:
1. One-half of any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship is included, without regard to who contributed the property.
 2. Property held by the decedent and one or more other persons other than the surviving spouse as joint tenants with right of survivorship is included to the following extent:
 - I. All property attributable to the decedent's contribution.
 - II. The decedent's pro rata share of property not attributable to the decedent's contribution, except to the extent of property attributable to contributions by a surviving joint tenant.

The decedent is presumed to have contributed the jointly owned property unless contribution by another is proven by clear and convincing evidence.
- d. Benefits payable by reason of the decedent's death under any policy, plan, contract, or other arrangement, either owned by the decedent or over which the decedent had a general power of appointment or had the power to designate the surviving spouse as beneficiary, including, without limitation:
1. Insurance on the life of the decedent.
 2. Accidental death benefits.
 3. Annuities.
 4. Employee benefits or similar arrangements.
 5. Individual retirement accounts.
 6. Pension or profit sharing plans.
 7. Deferred compensation.
 8. Any private or governmental retirement plan.
- e. Property irrevocably transferred by the decedent to the extent the decedent retained the possession or enjoyment of, or the right to income from, the property for life or for any period not ascertainable without reference to the decedent's death or for any period that does not in fact end before the decedent's death, except:
1. Property transferred for full and adequate consideration.

2. Transfers to that the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
3. Transfers that became irrevocable before the decedent's marriage to the surviving spouse.

The property included in total assets is that fraction of the transferred property to which the decedent retained the right.

- f. Property transferred by the decedent to the extent the decedent created a power over the property or the income from the property, which, immediately prior to death, could be exercised by the decedent in conjunction with any other person, or which could be exercised by a person who does not have a substantial interest that would be adversely affected by the exercise or nonexercise of the power, for the benefit of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except:

1. Property transferred for full and adequate consideration.
2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
3. Transfers which became irrevocable before the decedent's marriage to the surviving spouse.

The property included in total assets with respect to a power over property is that fraction of the property to which the power related.

- g. Property transferred by the decedent to persons other than the surviving spouse if such transfer was made both during the one-year period immediately preceding the decedent's death and during the decedent's marriage to the surviving spouse, except:

1. Property transferred for full and adequate consideration.
2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports such gift, or other writing.
3. That part of any property transferred to any one transferee that qualified for exclusion from gift tax under section 2503 of the Code.

For purposes of this sub-subdivision, the termination of a right or interest in, or power over, property that would have been included in the total assets under sub-subdivisions b., e., or f. of this subdivision if the right, interest, or power had not terminated until the decedent's death shall be deemed to be a transfer of such property. Termination occurs when, with respect to a right or interest in property, the decedent transfers or relinquishes the right or interest; with respect to a power over property, the power terminates by exercise or release, but not by lapse or default.

If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.

- (4) Total Net Assets. – The total assets reduced by year's allowances to persons other than the surviving spouse and claims. (2000-140, s. 92; 2000-178, s. 2; 2001-364, s. 4; 2001-487, s. 16; 2003-296, s. 2; 2009-368, s. 1.)

§ 30-3.3: Repealed by Session Laws 2009-368, s. 1, effective July 27, 2009, and applicable to decedents dying on or after October 1, 2009.

§ 30-3.3A. Valuation of property.

(a) Basic Principles. – Unless otherwise expressly stated to the contrary in this section, the value of property shall be that property's fair market value, taking into consideration any applicable discounts. The value shall be determined as of the date of death, except for (i) property transferred to persons other than the surviving spouse described in G.S. 30-3.2(3f)g. and (ii) property transferred to the surviving spouse described in G.S. 30-3.2(3c)e. that is not held in trust, that is not life insurance, and that is not held as tenants by the entirety or some other form of ownership that passes to the surviving spouse by reason of survivorship. The value of gift property described in clauses (i) and (ii) shall be determined as the value on the date of transfer; but if the donee proves to the satisfaction of the clerk that the value on the date of disposal of the asset prior to the decedent's death is less than on the original date of transfer or that the value on the date of death is less than on the original date of transfer, then the lesser value shall be used.

(b) Certain Joint Property. – In valuing a partial interest in jointly owned property with right of survivorship, there shall be no discount taken to reflect the decedent's partial interest including, but not limited to, discounts for lack of control, ownership of a fractional interest, or lack of marketability.

(c) Certain Powers of Appointment. – In valuing property over which the decedent held a presently exercisable general power of appointment, the value includes only the property subject to the power that passes at the decedent's death, whether by exercise, release, lapse, default, or otherwise.

(d) Certain Transfers With Retained Interests. – In valuing property transferred by the decedent with a retained right of possession or enjoyment or the right to income described in G.S. 30-3.2(3f)e., only the fraction of the property to which the decedent retained a right shall be included. In valuing property in which the decedent created a power as described in G.S. 30-3.2(3f)f., the value includes, with respect to a power, the value of the property subject to the power, and the amount included in the valuation with respect to a power over the income is the value of the property that produces or produced the income; provided, however, if the power is a power over both income and property and the foregoing produces different amounts, the amount included in the valuation is the greater amount.

(e) Partial or Contingent Interest Property. – The valuation of partial and contingent property interests, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and by using a presumed rate of return of six percent (6%) of the value of the underlying property in which those interests are limited, unless upon good cause shown by one of the parties, the clerk determines that the use of such tables or rate of return is not appropriate, then the value of such interests shall be determined under subsection (f) of this section. However, in valuing partial and contingent interests passing to the surviving spouse, the following special rules apply:

- (1) The value of the beneficial interest of a spouse shall be the entire fair market value of any property held in trust if the decedent was the settlor of the trust, if the trust is held for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, and if the terms of the trust meet the following requirements:
 - a. During the lifetime of the surviving spouse, the trust is controlled by one or more nonadverse trustees.
 - b. The trustee shall distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.
 - c. The trustee shall distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.
 - d. In exercising discretion, the trustee may be authorized or required to take into consideration all other income assets and other means of support available to the surviving spouse.
- (2) To the extent that the partial or contingent interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate upon the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage.
- (3) Repealed by Session Laws 2015-205, s. 4.1, effective August 11, 2015.
- (f) Method for Determining Value. – Unless otherwise stated in this Article, the value of property shall be determined as follows:
 - (1) The value of property passing by intestacy described in G.S. 30-3.2(3f)a. and Property Passing to Surviving Spouse, other than property held in a trust, shall be established by the good-faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse, in which cases the value of such property shall be determined pursuant to subdivision (4) of this subsection.
 - (2) The value of property constituting an interest in a trust shall be established by good-faith agreement of the surviving spouse, the personal representative, and the trustee, unless either (i) the surviving spouse is both the personal representative and the trustee or (ii) the clerk determines that the trustee or the personal representative may not be able to represent the trust or the estate, respectively, adversely to the surviving spouse, in which cases the value of

such property shall be determined pursuant to subdivision (4) of this subsection.

- (3) The value of all other property shall be established by the good-faith agreement of the surviving spouse, the personal representative, and the responsible person that received, held, or controlled such property on the date used to determine the value of such property for purposes of determining total assets, unless the clerk determines that valuation under subdivision (4) of this subsection is more appropriate.
- (4) If the value of any property is not established by agreement as provided above, the parties may present evidence regarding value, which may include expert testimony, and the clerk may appoint one or more qualified and disinterested persons to help determine the value of such property. After hearing, the clerk shall make a finding of fact of the value of each asset. (2009-368, s. 1; 2015-205, s. 4.1.)

§ 30-3.4. Procedure for determining the elective share.

(a) **Exercisable Only During Lifetime.** – The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, by the surviving spouse's agent if the surviving spouse's power of attorney expressly authorizes the agent to do so or to generally engage in estate, trusts, and other beneficial interests, or, with approval of court, by the guardian of the surviving spouse's estate or general guardian. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) **Time Limitations.** – A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration in connection with the will or intestate proceeding with respect to which the surviving spouse claims the elective share by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Repealed by Session Laws 2011, c. 344, s. 6, effective January 1, 2012, and applicable to estates of decedents dying on or after that date.

(d) Repealed by Session Laws 2009, c. 368, s. 1, effective July 27, 2009, and applicable to decedents dying on or after October 1, 2009.

(d1) **Mediation.** – The clerk may order mediation as described in G.S. 7A-38.3B of any disputes in connection with an elective share proceeding.

(e) Repealed by Session Laws 2009, c. 368, s. 1, effective July 27, 2009, and applicable to decedents dying on or after October 1, 2009.

(e1) **Procedure.** – An elective share proceeding shall be an estate proceeding and shall be conducted in accordance with the procedures of Article 2 of Chapter 28A of the General Statutes.

(e2) **Information About Total Net Assets.** – In order to assist the clerk in determining whether a surviving spouse is entitled to an elective share, and, if so, the amount thereof, the following provisions apply:

- (1) **Submission within two months.** – In every case in which a petition to determine an elective share has been filed, within two months of the filing of

the petition, the personal representative shall submit sufficient information about the total assets for the clerk to determine the elective share. To fulfill its obligation to provide information, the personal representative may prepare and submit to the clerk a proposed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 or other information as the clerk sees fit.

- (2) Examination regarding assets. – If the personal representative, the surviving spouse, or a responsible person has reasonable grounds to believe that any person has a claim or has in its possession assets included in Total Net Assets, then the personal representative, surviving spouse, or responsible person may use the procedures set out in G.S. 28A-15-12 to cause the clerk to examine the person believed to have a claim or to possess assets included in Total Net Assets.

(f) Findings and Conclusions. – After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Repealed by Session Laws 2009, c. 368, s. 1, effective July 27, 2009, and applicable to decedents dying on or after October 1, 2009.

(h) Expenses. – The expenses (including attorneys' fees) reasonably incurred by the personal representative, other responsible persons, and the surviving spouse in connection with elective share proceedings shall be equitably apportioned by the clerk of court in the clerk's discretion among the personal representative, other responsible persons, and the surviving spouse. (2000-178, s. 2; 2003-296, s. 4; 2009-368, s. 1; 2011-344, s. 6; 2017-153, s. 2.1.)

§ 30-3.5. Satisfaction of elective share.

(a) Repealed by Session Laws 2009, c. 368, s. 1, effective August 27, 2009, and applicable to decedents dying on or after October 1, 2009.

(a1) Apportionment. – The personal representative shall apportion the liability to the surviving spouse for the amount of the elective share among all responsible persons as follows:

- (1) The net value of each nonspousal asset shall be determined by calculating the value of the nonspousal asset under G.S. 30-3.3A and reducing such value by that portion of the claims (including year's allowances to persons other than the surviving spouse) payable out of, charged against, or otherwise properly allocable to the nonspousal asset.
- (2) Using the net value of each nonspousal asset as determined under subdivision (1) of this subsection, the personal representative shall determine each responsible person's liability to the surviving spouse by multiplying the amount of the elective share by a fraction, the numerator of which is the net value of the responsible person's nonspousal assets and the denominator of which is the net value of all of the nonspousal assets.

(a2) Recovery From Responsible Persons. – In recovering assets from responsible persons, the following rules apply:

- (1) To the extent the personal representative is a responsible person, the personal representative shall satisfy its liability to the surviving spouse out of its nonspousal assets according to the following order of priority:
 - a. The personal representative shall satisfy its liability out of the net value of the nonspousal assets passing by intestate succession by allocating the liability proportionately among each intestate heir based on the fraction of the net value of the nonspousal assets passing by intestate succession that each intestate heir is entitled to receive.
 - b. If the net value of the nonspousal assets passing by intestate succession is not sufficient to satisfy the personal representative's liability in full, the personal representative shall satisfy its remaining liability out of the net value of the nonspousal assets passing as part of the decedent's residuary estate by allocating the liability proportionately among each beneficiary of the decedent's residuary estate based on the fraction of the net value of the nonspousal assets passing as part of the decedent's residuary estate that each residuary beneficiary is entitled to receive.
 - c. If the net value of the nonspousal assets in the residuary estate is not sufficient to satisfy the personal representative's liability in full, the personal representative shall satisfy its remaining liability by allocating the remaining liability proportionately among each other beneficiary of the decedent's will based on the fraction of the net value of the remaining nonspousal assets each other beneficiary is entitled to receive.
- (2) The personal representative shall recover from each other responsible person the responsible person's liability to the surviving spouse.
- (3) Each responsible person, including the personal representative in its capacity as a responsible person, may elect to satisfy its liability in full by any of the following methods:
 - a. Conveyance of that portion of the responsible person's nonspousal assets (or identical substitute assets), valued on the date of conveyance, sufficient to satisfy the responsible person's liability; or, if the value of the responsible person's nonspousal assets on the date of conveyance is less than the responsible person's liability, conveyance of all of the responsible person's nonspousal assets (or identical substitute assets).
 - b. Payment of the liability in cash.
 - c. Payment of the liability in other property upon written agreement of the surviving spouse at values agreed by the surviving spouse for purposes of determining the extent of the liability satisfied.
 - d. Any combination of the payment methods set forth under sub-subdivision a. through d. of this subdivision, provided that the total value of assets conveyed by the responsible person equals such responsible person's liability.

(a3) Inability or Refusal to Pay. – The personal representative shall be entitled to petition the clerk of court for an order requiring any responsible person to satisfy its liability. Upon refusal of a responsible person to obey such an order, the personal representative shall be entitled to a judgment against such responsible person in the amount of the liability and to any other remedies the clerk deems appropriate. Although the responsible person shall remain primarily liable for such responsible person's liability for the elective share, the following rules apply:

- (1) If the responsible person makes a gratuitous transfer, whether inter vivos or by testate or intestate succession, of all or any part of the responsible person's nonspousal assets or the proceeds thereof after the decedent's death, then the gratuitous transferee shall be liable for the amount transferred, and the personal representative shall be entitled to recover that amount from the transferee as if the transferee were the responsible person.
- (2) If the responsible person is a fiduciary and makes a distribution of all or any part of the responsible person's nonspousal assets or the proceeds thereof after the decedent's death, then the distributee shall be liable for the amount transferred, and the personal representative shall be entitled to recover that amount from the distributee as if the distributee were the responsible person.

If, after exhausting all other remedies in this section, the personal representative cannot reasonably recover a responsible person's liability, then, with the approval of the clerk, the defaulting responsible person's liability shall be apportioned on a pro rata basis among the responsible persons who have not defaulted. Each nondefaulting other responsible person shall be liable for the amount of the liability apportioned to it in the same manner and to the same extent as its original liability for the elective share; provided, that each responsible person's liability shall not exceed the responsible person's proportionate share of the value of the nonspousal assets based on the values used in determining Total Net Assets. Each nondefaulting other responsible person shall be entitled to a proportionate share of any judgment against or subsequent recovery of the liability from the defaulting responsible person.

(b) Standstill Order. – After the filing of the petition demanding an elective share, the personal representative, surviving spouse, or any responsible person may request the clerk to issue an order that any responsible person not dispose of all or a portion of the decedent's Total Net Assets or the proceeds thereof pending the payment of the elective share. The decision to issue such an order shall be in the discretion of the clerk. A person who violates the standstill order may be held in civil contempt of court pursuant to Article 5A of Chapter 2 of the General Statutes. The clerk shall enter an order terminating the standstill order upon the clerk's determination that the standstill order is no longer necessary or desirable.

(c),(d) Repealed by Session Laws 2009, c. 368, s. 1, effective August 27, 2009, and applicable to decedents dying on or after October 1, 2009.

(e) Bond. – If a responsible person distributes or disposes of nonspousal assets prior to final apportionment of the elective share and expenses, the personal representative may require the responsible person or the transferee to provide a bond or other security for the responsible person's liability for payment of the elective share and apportioned expenses in the form and amount prescribed by the personal representative, with the approval of the clerk. (2000-178, s. 2; 2009-368, s. 1.)

§ 30-3.6. Waiver of rights.

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving spouse, by the surviving spouse's attorney-in-fact if the surviving spouse's power of attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, or, with approval of court, by the guardian of the surviving spouse's estate or general guardian.

(b) A waiver is not enforceable if the surviving spouse proves that:

- (1) The waiver was not executed voluntarily; or
- (2) The surviving spouse or the surviving spouse's representative making the waiver was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure.

(c) A written waiver that would have been effective to waive a spouse's right to dissent in estates of decedents dying on or before December 31, 2000, under Article 1 of Chapter 30 of the General Statutes is effective to waive that spouse's right of elective share under this Article for estates of decedents dying on or after January 1, 2001. (2000-178, s. 2; 2003-296, s. 5; 2004-203, s. 30; 2009-368, s. 1.)

Article 2.

Dower.

§§ 30-4 through 30-8. Repealed by Session Laws 1959, c. 879, s. 14.

§ 30-9. Repealed by Session Laws 1965, c. 853.

§ 30-10. Repealed by Session Laws 1959, c. 879, s. 14.

Article 3.

Allotment of Dower.

§§ 30-11 through 30-14. Repealed by Session Laws 1959, c. 879, s. 14.

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 or guardian of the estate, 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; 2017-158, s. 5.)

§ 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.