

## WILLS FORMS

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Article 2.

Shares of Persons Who Take upon Intestacy.

**§ 29-13. Descent and distribution upon intestacy; 120-hour survivorship requirement, revised simultaneous death act, Article 24, Chapter 28A.**

(a) All the estate of a person dying intestate shall descend and be distributed, subject to the payment of costs of administration and other lawful claims against the estate, and subject to the payment of State inheritance or estate taxes, as provided in this Chapter.

(b) The determination of whether an heir has predeceased a person dying intestate shall be made as provided by Article 24 of Chapter 28A of the General Statutes. (1959, c. 879, s. 1; 1999-337, s. 5; 2007-132, s. 2.)

**§ 29-14. Share of surviving spouse.**

(a) Real Property. – The share of the surviving spouse in the real property is:

- (1) If the intestate is survived by only one child or by any lineal descendant of only one deceased child, a one-half undivided interest in the real property;
- (2) If the intestate is survived by two or more children, or by one child and any lineal descendant of one or more deceased children or by lineal descendants of two or more deceased children, a one-third undivided interest in the real property;
- (3) If the intestate is not survived by a child, children or any lineal descendant of a deceased child or children, but is survived by one or more parents, a one-half undivided interest in the real property;
- (4) If the intestate is not survived by a child, children or any lineal descendant of a deceased child or children, or by a parent, all the real property.

(b) Personal Property. – The share of the surviving spouse in the personal property is:

- (1) If the intestate is survived by only one child or by any lineal descendant of only one deceased child, and the net personal property does not exceed thirty thousand dollars (\$30,000) in value, all of the personal property; if the net personal property exceeds thirty thousand dollars (\$30,000) in value, the sum of thirty thousand dollars (\$30,000) plus one half of the balance of the personal property;
- (2) If the intestate is survived by two or more children, or by one child and any lineal descendant of one or more deceased children, or by lineal descendants of two or more deceased children, and the net personal property does not exceed thirty thousand dollars (\$30,000) in value, all of the personal property; if the net personal property exceeds thirty thousand dollars (\$30,000) in value, the sum of thirty thousand dollars (\$30,000) plus one third of the balance of the personal property;

- (3) If the intestate is not survived by a child, children, or any lineal descendant of a deceased child or children, but is survived by one or more parents, and the net personal property does not exceed fifty thousand dollars (\$50,000) in value, all of the personal property; if the net personal property exceeds fifty thousand dollars (\$50,000) in value, the sum of fifty thousand dollars (\$50,000) plus one half of the balance of the personal property;
- (4) If the intestate is not survived by a child, children, or any lineal descendant of a deceased child or children, or by a parent, all of the personal property.

(c) When an equitable distribution of property is awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent, the share of the surviving spouse determined under subsections (a) and (b) of this section shall be first determined as though no property had been awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent, and then reduced by the net value of the marital estate awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent. (1959, c. 879, s. 1; 1979, c. 186, s. 1; 1981, c. 69; 1995, c. 262, s. 3; 2001-364, s. 6.)

**§ 29-15. Shares of others than surviving spouse.**

Those persons surviving the intestate, other than the surviving spouse, shall take that share of the net estate not distributable to the surviving spouse, or the entire net estate if there is no surviving spouse, as follows:

- (1) If the intestate is survived by only one child or by only one lineal descendant of only one deceased child, that person shall take the entire net estate or share, but if the intestate is survived by two or more lineal descendants of only one deceased child, they shall take as provided in G.S. 29-16; or
- (2) If the intestate is survived by two or more children or by one child and any lineal descendant of one or more deceased children, or by lineal descendants of two or more deceased children, they shall take as provided in G.S. 29-16; or
- (3) If the intestate is not survived by a child, children or any lineal descendant of a deceased child or children, but is survived by both parents, they shall take in equal shares, or if either parent is dead, the surviving parent shall take the entire share; or
- (4) If the intestate is not survived by such children or lineal descendants or by a parent, the brothers and sisters of the intestate, and the lineal descendants of any deceased brothers or sisters, shall take as provided in G.S. 29-16; or
- (5) If there is no one entitled to take under the preceding subdivisions of this section or under G.S. 29-14,

- a. The paternal grandparents shall take one half of the net estate in equal shares, or, if either is dead, the survivor shall take the entire one half of the net estate, and if neither paternal grandparent survives, then the paternal uncles and aunts of the intestate and the lineal descendants of deceased paternal uncles and aunts shall take said one half as provided in G.S. 29-16; and
- b. The maternal grandparents shall take the other one half in equal shares, or if either is dead, the survivor shall take the entire one half of the net estate, and if neither maternal grandparent survives, then the maternal uncles and aunts of the intestate and the lineal descendants of deceased maternal uncles and aunts shall take one half as provided in G.S. 29-16; but
- c. If there is no grandparent and no uncle or aunt, or lineal descendant of a deceased uncle or aunt, on the paternal side, then those of the maternal side who otherwise would be entitled to take one half as hereinbefore provided in this subdivision shall take the whole; or
- d. If there is no grandparent and no uncle or aunt, or lineal descendant of a deceased uncle or aunt, on the maternal side, then those on the paternal side who otherwise would be entitled to take one half as hereinbefore provided in this subdivision shall take the whole. (1959, c. 879, s. 1.)

Article 8.

Election to Take Life Interest in Lieu of Intestate Share.

**§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.**

(a) In lieu of the intestate share provided in G.S. 29-14 or G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who has petitioned for an elective share shall be entitled to take as his or her intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture, except that real estate as to which the surviving spouse:

- (1) Has waived his or her rights by joining with the other spouse in a conveyance thereof, or
- (2) Has release or quitclaimed his or her interest therein in accordance with G.S. 52-10, or
- (3) Was not required by law to join in conveyance thereof in order to bar the elective life estate, or
- (4) Is otherwise not legally entitled to the election provided in this section.

(b) Regardless of the value thereof and despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a), the life estate provided for in subsection (a) shall at the election of the surviving spouse include a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if such dwelling house were owned by the deceased spouse at the time of his or her death, together with the outbuildings, improvements and easements thereunto belonging or appertaining, and lands upon which situated and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings therein.

(c) The election provided for in subsection (a) shall be made by the filing of a notice thereof with the clerk of the superior court of the county in which the administration of the estate is pending, or, if no administration is pending, then with the clerk of the superior court of any county in which the administration of the estate could be commenced. Such election shall be made:

- (1) At any time within one month after the expiration of the time fixed for the filing of the petition for elective share under Article 1A of Chapter 30, or
- (2) In case of intestacy, then within 12 months after the death of the deceased spouse if letters of administration are not issued within that period, or
- (3) If letters of administration are issued within 12 months after the date of the death of the deceased spouse, then within one month after the expiration of the time limited for filing claims against the estate, or

- (4) If litigation that affects the share of the surviving spouse in the estate is pending, then within such reasonable time as may be allowed by written order of the clerk of the superior court.
- (c1) The notice of election shall:
  - (1) Be directed to the clerk with whom filed;
  - (2) State that the surviving spouse making the same elects to take under this section rather than under the provisions of G.S. 29-14, 29-21, or 30-3.1, as applicable;
  - (3) Set forth the names of all heirs, devisees, legatees, personal representatives and all other persons in possession of or claiming an estate or an interest in the property described in subsection (a); and
  - (4) Request the allotment of the life estate provided for in subsection (a).

(c2) The notice of election may be in person, or by attorney authorized in a writing executed and duly acknowledged by the surviving spouse and attested by at least one witness. If the surviving spouse is a minor or an incompetent, the notice of election may be executed and filed by a general guardian or by the guardian of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the notice of election may be executed and filed by a next friend appointed by the clerk. The notice of election, whether in person or by attorney, shall be filed as a record of the court, and a summons together with a copy of the notice shall be served upon each of the interested persons named in the notice of election.

(d) In case of election to take a life estate in lieu of an intestate share or elective share, as provided in either G.S. 29-14, 29-21, or 30-3.3(a), the clerk of superior court, with whom the notice of election has been filed, shall summon and appoint a jury of three disinterested persons who being first duly sworn shall promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) and make a final report of such action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after the summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse shall have been allotted and set aside a life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and recorded in the office of the register of deeds of each county in which any part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for in this section, the rules of procedure relating to partition proceedings shall apply except insofar as the same would be inconsistent with the provisions of this section.

(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section shall be subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

- (1) By a mortgage or deed of trust in which the surviving spouse has waived his or her rights by joining with the other spouse in the making thereof; or

- (2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or
- (3) By a mortgage or deed of trust made prior to the marriage; or
- (4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.

(h) If no election is made in the manner and within the time provided for in subsection (c) the surviving spouse shall be conclusively deemed to have waived his or her right to elect to take under the provisions of this section, and any interest which the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section shall terminate. (1959, c. 879, s. 1; 1961, c. 958, ss. 4-8; 1965, c. 848; 1997-456, s. 27; 2000-178, s. 3.)

**Chapter 31.**

**Wills.**

**Article 1.**

**Execution of Will.**

**§ 31-1. Who may make will.**

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

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

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

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

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

**§ 31-3.2. Kinds of wills.**

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

**§ 31-3.3. Attested written will.**

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

**§ 31-3.4. Holographic will.**

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



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

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

**§ 31-3.5. Nuncupative will.**

A nuncupative will is a will

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

**§ 31-3.6. Seal not required.**

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

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

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

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

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

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.

Article 3.

Witnesses to Will.

**§ 31-8.1. Who may witness.**

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

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

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

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

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

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

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

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

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

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

Article 3.

Powers of Fiduciaries.

**§ 32-25. Definition.**

As used in this Article, the term "fiduciary" means the one or more executors of the estate of a decedent, or the one or more trustees of a testamentary or inter vivos trust estate, whichever in a particular case shall be appropriate. (1965, c. 628, s. 1.)

Article 3.

Powers of Fiduciaries.

**§ 32-26. Incorporation by reference of powers enumerated in § 32-27; restriction on exercise of such powers.**

(a) By an express intention of the testator or settlor so to do contained in a will, or in an instrument in writing whereby a trust estate is created inter vivos, any or all of the powers or any portion thereof enumerated in G.S. 32-27, as they exist at the time of the signing of the will by the testator or at the time of the signing by the first settlor who signs the trust instrument, may be, by appropriate reference made thereto, incorporated in such will or other written instrument, with the same effect as though such language were set forth verbatim in the instrument. Incorporation of one or more of the powers contained in G.S. 32-27 by reference to that section shall be in addition to and not in limitation of the common law or statutory powers of the fiduciary.

(b) No power of authority conferred upon a fiduciary as provided in this Article shall be exercised by such fiduciary in such a manner as, in the aggregate, to deprive the trust or the estate involved of an otherwise available tax exemption, deduction or credit, expressly including the marital deduction, or operate to impose a tax upon a donor or testator or other person as owner of any portion of the trust or estate involved. "Tax" includes, but is not limited to, any federal, State, or local income, gift, estate or inheritance tax.

(c) Nothing herein shall be construed to prevent the incorporation of the powers enumerated in G.S. 32-27 in any other kind of instrument or agreement. (1965, c. 628, s. 1.)

**§ 32-27. Powers which may be incorporated by reference in trust instrument. The following powers may be incorporated by reference as provided in G.S. 32-26:**

- (1) Retain Original Property. – To retain for such time as the fiduciary shall deem advisable any property, real or personal, which the fiduciary may receive, even though the retention of such property by reason of its character, amount, proportion to the total estate or otherwise would not be appropriate for the fiduciary apart from this provision.
- (2) Sell and Exchange Property. – To sell, exchange, give options upon, partition or otherwise dispose of any property or interest therein which

the fiduciary may hold from time to time, with or without order of court, at public or private sale or otherwise, upon such terms and conditions, including credit, and for such consideration as the fiduciary shall deem advisable, and to transfer and convey the property or interest therein which is at the disposal of the fiduciary, in fee simple absolute or otherwise, free of all trust; and the party dealing with the fiduciary shall not be under a duty to follow the proceeds or other consideration received by the fiduciary from such sale or exchange.

- (3) Invest and Reinvest. – To invest and reinvest, as the fiduciary shall deem advisable, in stocks (common or preferred), bonds, debentures, notes, mortgages or other securities, in or outside the United States; in insurance contracts on the life of any beneficiary or of any person in whom a beneficiary has an insurable interest, or in annuity contracts for any beneficiary, in any real or personal property, in investment trusts; in participations in common trust funds, and generally in such property as the fiduciary shall deem advisable, even though such investment shall not be of the character approved by applicable law but for this provision.
- (4) Invest without Diversification. – To make investments which cause a greater proportion of the total property held by the fiduciary to be invested in investments of one type or of one company than would be considered appropriate for the fiduciary apart from this provision.
- (5) Continue Business. – To the extent and upon such terms and conditions and for such periods of time as the fiduciary shall deem necessary or advisable, to continue or participate in the operation of any business or other enterprise, whatever its form of organization, including but not limited to the power:
  - a. To effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;
  - b. To dispose of any interest therein or acquire the interest of others therein;
  - c. To contribute thereto or invest therein additional capital or to lend money thereto, in any such case upon such terms and conditions as the fiduciary shall approve from time to time;
  - d. To determine whether the liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate or trust set aside for use in the business or to the estate or trust as a whole; and
  - e. In all cases in which the fiduciary is required to file accounts in any court or in any other public office, it shall not be necessary to itemize receipts and disbursements and distributions of property but it shall be sufficient for the fiduciary to show in the account a single figure or consolidation of figures, and the fiduciary shall

be permitted to account for money and property received from the business and any payments made to the business in lump sum without itemization.

- (6) Form Corporation or Other Entity. – To form a corporation or other entity and to transfer, assign, and convey to such corporation or entity all or any part of the estate or of any trust property in exchange for the stock, securities or obligations of any such corporation or entity, and to continue to hold such stock and securities and obligations.
- (7) Operate Farm. – To continue any farming operation received by the fiduciary pursuant to the will or other instrument and to do any and all things deemed advisable by the fiduciary in the management and maintenance of such farm and the production and marketing of crops and dairy, poultry, livestock, orchard and forest products including but not limited to the following powers:
  - a. To operate the farm with hired labor, tenants or sharecroppers;
  - b. To lease or rent the farm for cash or for a share of the crops;
  - c. To purchase or otherwise acquire farm machinery and equipment and livestock;
  - d. To construct, repair, and improve farm buildings of all kinds needed in the fiduciary's judgment, for the operation of the farm;
  - e. To make or obtain loans or advances at the prevailing rate or rates of interest for farm purposes such as for production, harvesting, or marketing, or for the construction, repair, or improvement of farm buildings, or for the purchase of farm machinery or equipment or livestock;
  - f. To employ approved soil conservation practices in order to conserve, improve, and maintain the fertility and productivity of the soil;
  - g. To protect, manage and improve the timber and forest on the farm and sell the timber and forest products when it is to the best interest of the estate;
  - h. To ditch, dam and drain damp or wet fields and areas of the farm when and where needed;
  - i. To engage in the production of livestock, poultry or dairy products, and to construct such fences and buildings and plant such pastures and crops as may be necessary to carry on such operations;
  - j. To market the products of the farm; and
  - k. In general, to employ good husbandry in the farming operation.
- (8) Manage Real Property. –
  - a. To improve, manage, protect, and subdivide any real property;
  - b. To dedicate or withdraw from dedication parks, streets, highways, or alleys;

- c. To terminate any subdivision or part thereof;
  - d. To borrow money for the purposes authorized by this subdivision for such periods of time and upon such terms and conditions as to rates, maturities and renewals as the fiduciary shall deem advisable and to mortgage or otherwise encumber any such property or part thereof, whether in possession or reversion;
  - e. To lease any such property or part thereof to commence at the present or in the future, upon such terms and conditions, including options to renew or purchase, and for such period or periods of time as the fiduciary deems advisable although such period or periods may extend beyond the duration of the trust or the administration of the estate involved;
  - f. To make gravel, sand, oil, gas and other mineral leases, contracts, licenses, conveyances or grants of every nature and kind which are lawful in the jurisdiction in which such property lies;
  - g. To manage and improve timber and forests on such property, to sell the timber and forest products, and to make grants, leases, and contracts with respect thereto;
  - h. To modify, renew or extend leases;
  - i. To employ agents to rent and collect rents;
  - j. To create easements and release, convey, or assign any right, title, or interest with respect to any easement on such property or part thereof;
  - k. To erect, repair or renovate any building or other improvement on such property, and to remove or demolish any building or other improvement in whole or in part; and
  - l. To deal with any such property and every part thereof in all other ways and for such other purposes or considerations as it would be lawful for any person owning the same to deal with such property either in the same or in different ways from those specified elsewhere in this subdivision (8).
- (8a) Comply with environmental law. –
- a. To inspect property held by the fiduciary, including interests in sole proprietorships, partnerships, or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with environmental law affecting such property and to respond to any actual or threatened violation of any environmental law affecting property held by the fiduciary;
  - b. To take, on behalf of the estate or trust, any action necessary to prevent, abate, or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;

- c. To refuse to accept property in trust if the fiduciary determines that any property to be donated to the trust either is contaminated by any hazardous substance or is being used or has been used for any activity directly or indirectly involving hazardous substance which could result in liability to the trust or otherwise impair the value of the assets held therein;
  - d. To settle or compromise at any time any and all claims against the trust or estate which may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting property held in trust or in an estate;
  - e. To disclaim any power granted by any document, statute, or rule of law which, in the sole discretion of the fiduciary, may cause the fiduciary to incur personal liability under any environmental law;
  - f. To decline to serve as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between it in its fiduciary capacity and in its individual capacity because of potential claims or liabilities which may be asserted against it on behalf of the trust or estate because of the type or condition of assets held therein.
  - g. For purposes of this subsection "environmental law" means any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment or human health. For purposes of this subsection, "hazardous substances" means any substance defined as hazardous or toxic or otherwise regulated by any environmental law. The fiduciary shall be entitled to charge the cost of any inspection, review, abatement, response, cleanup, or remedial action authorized herein against the income or principal of the trust or estate. A fiduciary shall not be personally liable to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's compliance with any environmental law, specifically including any reporting requirement under such law. Neither the acceptance by the fiduciary of property or a failure by the fiduciary to inspect property shall be deemed to create any inference as to whether or not there is or may be any liability under any environmental law with respect to such property.
- (9) Pay Taxes and Expenses. – To pay taxes, assessments, compensation of the fiduciary, and other expenses incurred in the collection, care, administration, and protection of the trust or estate.
- (10) Receive Additional Property. – To receive additional property from any source and administer such additional property as a portion of the appropriate trust or estate under the management of the fiduciary;



provided the fiduciary shall not be required to receive such property without the fiduciary's consent.

- (11) Deal with Other Trusts. – In dealing with one or more fiduciaries:
  - a. To sell property, real or personal, to, or to exchange property with, the trustee of any trust which the decedent or the settlor or his spouse or any child of his shall have created, for such estates and upon such terms and conditions as to sale price, terms of payment, and security as to the fiduciary shall seem advisable; and the fiduciary shall be under no duty to follow the proceeds of any such sale; and
  - b. To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals and securities as the fiduciary shall deem advisable from any trust created by the decedent, his spouse, or any child of his, for the purpose of paying debts of the decedent, taxes, the costs of the administration of the estate, and like charges against the estate, or any part thereof, or discharging the liability of any fiduciary thereof and to mortgage, pledge or otherwise encumber such portion of the estate or any trust as may be required to secure such loan or loans and to renew such loans.
- (12) Borrow Money. – To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the fiduciary shall deem advisable, including the power of a corporate fiduciary to borrow from its own banking department, for the purpose of paying debts, taxes, or other charges against the estate or any trust, or any part thereof, and to mortgage, pledge or otherwise encumber such portion of the estate or any trust as may be required to secure such loan or loans; and to renew existing loans either as maker or endorser.
- (13) Make Advances. – To advance money for the protection of the trust or estate, and for all expenses, losses and liabilities sustained in the administration of the trust or estate or because of the holding or ownership of any trust or estate assets, for which advances with any interest the fiduciary shall have a lien on the assets of the trust or estate as against a beneficiary.
- (14) Vote Shares. – To vote shares of stock owned by the estate or any trust at stockholders meetings in person or by special, limited, or general proxy, with or without power of substitution.
- (15) Register in Name of Nominee. – To hold a security in the name of a nominee or in other form without disclosure of the fiduciary relationship so that title to the security may pass by delivery, but the fiduciary shall be liable for any act of the nominee in connection with the stock so held.
- (16) Exercise Options, Rights, and Privileges. – To exercise all options, rights, and privileges to convert stocks, bonds, debentures, notes,

mortgages, or other property into other stocks, bonds, debentures, notes, mortgages, or other property; to subscribe for other or additional stocks, bonds, debentures, notes, mortgages, or other property; and to hold such stocks, bonds, debentures, notes, mortgages, or other property so acquired as investments of the estate or trust so long as the fiduciary shall deem advisable.

- (17) Participate in Reorganizations. – To unite with other owners of property similar to any which may be held at any time in the decedent's estate or in any trusts in carrying out any plan for the consolidation or merger, dissolution or liquidation, foreclosure, lease, or sale of the property, incorporation or reincorporation, reorganization or readjustment of the capital or financial structure of any corporation, company or association the securities of which may form any portion of an estate or trust; to become and serve as a member of a stockholders or bondholders protective committee; to deposit securities in accordance with any plan agreed upon; to pay any assessments, expenses, or sums of money that may be required for the protection or furtherance of the interest of the distributees of an estate or beneficiaries of any trust with reference to any such plan; and to receive as investments of an estate or any trust any securities issued as a result of the execution of such plan.
- (18) Reduce Interest Rates. – To reduce the interest rate from time to time on any obligation, whether secured or unsecured, constituting a part of an estate or trust.
- (19) Renew and Extend Obligations. – To continue any obligation, whether secured or unsecured, upon and after maturity with or without renewal or extension upon such terms as the fiduciary shall deem advisable, without regard to the value of the security, if any, at the time of such continuance.
- (20) Foreclose and Bid in. – To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust, or other lien securing such bond, note or other obligation, and to bid in the property at such foreclosure sale, or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.
- (21) Insure. – To carry such insurance coverage, including public liability, for such hazards and in such amounts, either in stock companies or in mutual companies, as the fiduciary shall deem advisable.
- (22) Collect. – To collect, receive, and receipt for rents, issues, profits, and income of an estate or trust.
- (23) Litigate, Compromise or Abandon. – To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the estate or trust as the fiduciary shall deem advisable, and the fiduciary's decision shall be conclusive between the

fiduciary and the beneficiaries of the estate or trust and the person against or for whom the claim is asserted, in the absence of fraud by such persons; and in the absence of fraud, bad faith or gross negligence of the fiduciary, shall be conclusive between the fiduciary and the beneficiaries of the estate or trust.

- (24) **Employ and Compensate Agents, etc.** – To employ and compensate, out of income or principal or both and in such proportion as the fiduciary shall deem advisable, persons deemed by the fiduciary needful to advise or assist in the proper settlement of the estate or administration of any trust, including, but not limited to, agents, accountants, brokers, attorneys-at-law, attorneys-in-fact, investment brokers, rental agents, realtors, appraisers, and tax specialists; and to do so without liability for any neglect, omission, misconduct, or default of such agent or representative provided he was selected and retained with due care on the part of the fiduciary.
- (25) **Acquire and Hold Property of Two or More Trusts Undivided.** – To acquire, receive, hold and retain the principal of several trusts created by a single instrument undivided until division shall become necessary in order to make distributions; to hold, manage, invest, reinvest, and account for the several shares or parts of shares by appropriate entries in the fiduciary's books of account, and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, that the provisions of this subdivision shall not defer the vesting in possession of any share or part of share of the estate or trust.
- (25a) **Divide One Trust into Several Trusts and Make Distributions From Those Trusts.** –
  - a. To divide the funds and properties constituting any trusts into two or more identical separate trusts that represent two or more fractional shares of the funds and properties being divided, or to hold any addition or contribution to an existing trust as a separate, identical trust, and to make distributions of income and principal by a method other than pro rata from the separate trusts so created as the fiduciary determines to be in the best interests of the trust beneficiaries. In any case where two separate, identical trusts are created pursuant to this sub-subdivision, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the fiduciary may thereafter, to the extent possible consistent with the terms of the governing instrument, determine the value of any mandatory or discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy such distributions from the separate trusts in a manner designed

- to minimize the current and potential generation-skipping transfer tax.
- b. To divide the funds and properties constituting any trusts into two or more separate, nonidentical trusts if (i) the new trusts so created are not inconsistent with the terms of the governing instrument; and (ii) the terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust.
  - c. To fund the new trusts created pursuant to the authority granted under this subdivision either (i) by pro rata allocation of the assets of the original trust; (ii) based upon the fair market value of the assets at the date of division; or (iii) in a manner fairly reflecting the net appreciation or depreciation of the trust assets measured from the valuation date to the date of division.
- (25b) Consolidate Similar Trusts. – When the trustee is trustee of more than one trust, the terms of which are substantially similar and the beneficiaries of which are identical, to consolidate the assets of those trusts and administer the assets as one trust under the terms of one of the trusts.
- (26) Establish and Maintain Reserves. – To set up proper and reasonable reserves for taxes, assessments, insurance premiums, depreciation, obsolescence, amortization, depletion of mineral or timber properties, repairs, improvements, and general maintenance of buildings or other property out of rents, profits, or other income received; and to set up reserves also for the equalization of payments to or for beneficiaries; provided, however, that the provisions of this subdivision shall not affect the ultimate interests of beneficiaries in such reserves.
- (27) Distribute in Cash or Kind. – To make distribution of capital assets of the estate or trust in kind or in cash, or partially in kind and partially in cash, in divided or undivided interests, either pro rata or by a method other than pro rata among all distributees, without regard to the income tax basis or other special tax attributes of such assets, as the fiduciary finds to be most practicable and for the best interests of the distributees; and to determine the value of capital assets for the purpose of making distribution thereof if and when there be more than one distributee thereof, which determination shall be binding upon the distributees unless clearly capricious, erroneous and inequitable; provided, however, that the fiduciary shall not exercise any power under this subdivision unless the fiduciary holds title to or an interest in the property to be distributed and is required or authorized to make distribution thereof.
- (28) Pay to or for Minors or Incompetents. – To make payments in money, or in property in lieu of money, to or for a minor or incompetent in any one or more of the following ways:

- a. Directly to such minor or incompetent;
- b. To apply directly in payment for the support, maintenance, education, and medical, surgical, hospital, or other institutional care of such minor or incompetent;
- c. To the legal or natural guardian of such minor or incompetent;
- d. To any other person, whether or not appointed guardian of the person by any court, who shall, in fact, have the care and custody of the person of such minor or incompetent.

The fiduciary shall not be under any duty to see to the application of the payments so made, if the fiduciary exercised due care in the selection of the person, including the minor or incompetent, to whom such payments were made; and the receipt of such person shall be full acquittance to the fiduciary.

- (28a) Pay to Custodian Under Uniform Gifts or Transfers to Minors Act. – To make any distribution of income or principal, including real property, for the benefit of any distributee to a custodian under the North Carolina Uniform Transfers to Minors Act, Chapter 33A of the General Statutes, or under the provisions of any similar statute in the state where the minor or the custodian resides. Unless a custodian is specifically named in the governing instrument, the fiduciary shall have absolute discretion to nominate any qualified individual or financial institution, including the fiduciary, to serve as custodian, and to nominate one or more substitute custodians.
- (29) Apportion and Allocate Receipts and Expenses. – Where not otherwise provided by the Uniform Principal and Income Act of 2003 as contained in Chapter 37A of the General Statutes, to determine:
  - a. What is principal and what is income of any estate or trust and to allocate or apportion receipts and expenses as between principal and income in the exercise of the fiduciary's discretion, and, by way of illustration and not limitation of the fiduciary's discretion, to charge premiums on securities purchased at a premium against principal or income or partly against each;
  - b. Whether to apply stock dividends and other noncash dividends to income or principal or apportion them as the fiduciary shall deem advisable; and
  - c. What expenses, costs, taxes (other than estate, inheritance, and succession taxes and other governmental charges) shall be charged against principal or income or apportioned between principal and income and in what proportions.
- (30) Make Contracts and Execute Instruments. – To make contracts and to execute instruments, under seal or otherwise, as may be necessary in the exercise of the powers herein granted.

- (31) The foregoing powers shall be limited as follows for any trust which shall be classified as a "private foundation" as that term is defined by section 509 of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws (including each nonexempt charitable trust described in section 4947(a)(1) of the code which is treated as a private foundation) or nonexempt split-interest trust described in section 4947(a)(2) of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws (but only to the extent that section 508(e) of the code is applicable to such nonexempt split-interest trust under section 4947(a)(2)):
- a. The fiduciary shall make distributions of such amounts, for each taxable year, at such time and in such manner as not to become subject to the tax imposed by section 4942 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws.
  - b. No fiduciary shall engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws.
  - c. No fiduciary shall retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws.
  - d. No fiduciary shall make any investments in such manner as to subject the trust to tax under section 4944 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws.
  - e. No fiduciary shall make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws. (1965, c. 628, s. 1; 1967, c. 24, s. 15; c. 956; 1971, c. 1136, s. 3; 1977, c. 30; 1989, c. 652, s. 20; 1991, c. 192, s. 1; 1995, c. 235, ss. 1-3; 1997-456, s. 27; 1999-144, s. 1; 2003-232, s. 3.)

§ 32-28: Repealed by Session Laws 2005-192, s. 4, effective January 1, 2006.

§§ 32-29 through 32-33. Reserved for future codification purposes.

**§ 36C-4-408. Trust for care of animal.**

(a) Subject to this section, a trust for the care of one or more designated domestic or pet animals alive at the time of creation of the trust is valid.

(b) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of the designated animal or animals.

(c) The trust terminates at the death of the animal or last surviving animal. Upon termination, the trustee shall transfer the unexpended trust property in the following order:

- (1) As directed in the trust instrument.
- (2) If the trust was created in a preresiduary clause in the settlor's will or in a codicil to the settlor's will, under the residuary clause in the settlor's will.
- (3) If no taker is produced by the application of subdivision (1) or (2) of this subsection, to the settlor, if then living, otherwise to the settlor's heirs determined as of the date of the settlor's death under Chapter 29 of the General Statutes.

(d) The intended use of the principal or income can be enforced by a person designated for that purpose in the trust instrument or, if none, by a person appointed by the clerk of superior court having jurisdiction over the trust upon application to the clerk of superior court by a person.

(e) Except as ordered by the clerk of superior court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, bond, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) A governing instrument shall be liberally construed to bring the transfer within this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the settlor. Extrinsic evidence is admissible in determining the settlor's intent.

(g) The clerk of superior court may reduce the amount of the property transferred, if the clerk of superior court determines that the amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (c) of this section.

(h) If no trustee is designated or if no designated trustee agrees to serve or is able to serve, the clerk of superior court must name a trustee. The clerk of superior court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. The clerk of superior court may also make other orders and determinations as are advisable to carry out the intent of the settlor and the purpose of this section. (1995, c. 225, s. 1; 2005-192, s. 2; 2006-259, s. 13(b).)

## A BRIEF DESCRIPTION OF . . .

### WILLS

You can have a will prepared if you are over 18 and are of “sound mind,” as the law defines it.

A will can do at least four important things for you:

- 1) In your will, you can say who you want to get your property, whether that property is a house, a car, money in the bank, a favorite picture, or an old sweatshirt. Of course, you can name more than one person—you can give your favorite picture to your mom and your sweatshirt to your friend Eddie. If you die without a will, state law will determine how your property will pass, without regard to your wishes.
- 2) In your will, you can pick the person who will oversee the distribution of your property. This person—called the “executor”—will make sure that your wishes are carried out.
- 3) In your will, you can say what you would like done with your remains. For example, if you want to be cremated rather than buried, you can say so in your will.
- 4) If you have children, a will can set up a trust to help provide for them. You can also say in your will who you would like to have custody of your children when you die, though in some cases your wishes will not be granted. If you have children, be sure to ask what can be done for them in your will.

If you have a will prepared, and later decide that you do not like it, it can be revoked or amended. Your law student will tell you how to do this.

If you have any questions about wills, ask your law student. He or she can answer your questions, or can tailor your will to your specific needs.



## WILL PROTOCOLS

1. Initial intake. In your first contact with client, briefly describe the types of documents the clinic prepares and attempt to get a sense of what the clients wants. Schedule an in-person interview during which you will do a full interview for the Will (along with other documents)

If there is time, send the client a follow-up letter confirming the appointment and enclosing the Brief Descriptions of documents. Also send the document entitled Things to Bring if you Want a Will. Finally, if we are preparing wills for a couple, send the joint representation letter and speak separately with each client to ensure that they are on the same page and there are no obvious conflicts of interest.

2. Full interview. You will gather information for the Will during the initial interview, which will probably cover not only the Will, but also advance directives. You can address the various documents in whatever order seems logical and meets the client's needs. Before going through any intake forms, fill out the Documents – Family Information form so you will know who the players are. Then go through the Will Interview Form in its entirety. If the client wants a certain provision in his or her will and you are not sure whether such a provision can be included, tell the client that you will discuss the request with your supervising attorney and get back to him or her. Try to schedule another appointment, at which the documents will be signed.

3. Opening Memo and Discussion with Supervising Attorney. After the interview, write a detailed opening memo in which you set out the key information about the client, her/his family, property, and desires for the estate plan. (This will be combined with the opening memo for the other documents.) Discuss the plan with your supervising attorney before you begin drafting.

4. Drafting. After discussing the plan with your supervising attorney, draft the will using the forms in the wills folder and have it reviewed by your supervising attorney. Once the will has been approved, send the client a copy clearly marked DRAFT. (We have a stamp for this purpose.)

5. Getting client's approval. Within a reasonable amount of time, call the client to see if s/he has questions about the draft or wishes any changes to be made. If changes are made, be sure to have it reviewed again by the supervising attorney. Once the client communicates that he/she is satisfied with the document, arrange for it to be signed.

6 Arranging for the signing. You will need to arrange a place for the signing and for two witnesses and a notary. If you plan to meet at the office of one of the health care providers, like Duke ID or UNC ID or the Durham E.I. Clinic, call a day or two in advance to ask if a room can be made available. All of those offices also have notaries available, but they may not allow them to notarize anything other than healthcare related documents (eg HCPOA or Living Will). Make sure you know whether the notary can notarize a will. If not, talk to your supervising attorney about making arrangements for a notary. If the signing will be at the clinic office, you can ask either of the supervising attorneys to notarize. Sandra Pettiford is a notary, as well as several administrative staff members in the building.

The will must be signed in the presence of two witnesses, who also sign the will. By signing, the witnesses are attesting to the fact that the person signing the will is who he says he is, is mentally competent and is signing the will freely and voluntarily. The witnesses need not read the will or be aware of the contents of the will. The witnesses signatures will also be notarized, so they should have identification available for the notary.

Usually, you and another clinic student should serve as witnesses. If you cannot find another clinic student, you can ask anyone who is 18 years or older who is not named in the will to serve as a witness. This can include hospital/clinic personnel (NOTE: This is different from a health care power of attorney or living will which cannot be witnessed by employees of the health care provider).

It is a good idea to confirm your client's attendance at the scheduled meeting as late as possible (i.e., the morning of the appointment, the day before if the appointment is early in the morning.)

7. Signing. When you are together with your client for the signing, first review the will with your client in private. Ask the client if he/she would like you to go over it with him/her or would prefer to read it silently. If the client approves of the contents, then gather the witnesses and the notary.

When the client is ready to sign, we have a protocol for establishing the client's testamentary capacity. Ask the client the following questions in the presence of the witnesses and the notary:

1. What is the document you are about to sign?
2. Have you reviewed it carefully?
3. Does it reflect your desires about how your property will pass after your death?
4. Is anyone pressuring you to sign this will?
5. Do you want these people to witness your signing of this will?

*Note: if the client does not identify the document as his/her will, indicates that he/she has not read it, states that it does not reflect his/her desires, or that someone is forcing him/her to sign, do not proceed with the signing.*

If there is any doubt whatsoever about the testamentary capacity of the testator, ask the following additional questions in front of the witnesses:

6. Name your nearest relatives (spouse, children, parents, siblings).
7. According to the will, who will inherit your property?
8. What property do you own that you are planning to leave to these heirs?

Obviously, if questions 6-8 will be asked, the testator must be comfortable answering the

questions in front of the particular witnesses. When the questions have been asked and answered satisfactorily, have the testator sign the will in the space provided. Then have the witnesses sign, and finally, the notary.

8. Distributing copies.

After the client, the witnesses and the notary have signed the will, make two photocopies. ***Give the client the original.*** Keep one copy for our file. If you are having the will signed off-site, you can take it back to the office and make copies there. Also, scan the Will along with any other documents that have been signed and upload to Clio.

Instruct the client to keep the original will with his or her valuable papers--not in a safe deposit box--and to give the copy to the executor. Instruct the client to tell the executor where the original can be found. Instruct the client further to destroy all copies of the will if a new will is executed and to notify us. We can mail a copy of the will to the executor or anyone else the client wants to have a copy. Explain to the client how to revoke the will (by writing a new one, or by burning, tearing, canceling, obliterating, or destroying, with the intent and for the purpose of revoking it. Act can be by the testator himself or by another person in his presence and by his direction.) Also, leave written instructions re: revocation of wills with the client. Finally, instruct the client to consult with an attorney about the will if s/he moves out of NC, as each state has different requirements.

## THINGS TO BRING IF YOU WANT A WILL

It helps us, in drawing up a will for you, if you bring:

1. Your present **will** (if you have one);
2. **Deeds** to any real estate you own, such as your home;
3. **Life insurance policies**;
4. The **addresses and phone numbers** of close family members and partners;
5. **Marriage Certificates**; and
6. **Divorce judgments** (if you have been divorced).

Thank you.

**DUKE HEALTH JUSTICE CLINIC  
Joint Representation Informed Consent  
Document Preparation**

Duke Health Justice Clinic has agreed to be the lawyer for both [client] and [co-client] in preparing \_\_\_\_\_ . This is called “Joint Representation.” We need to make sure you understand how things work when two people share a lawyer, and make sure you agree to this.

**Goals of Your Legal Case:** At this time, each of you has assured me that you both share a common purpose in making plans that involve your property and health care. In other words, there are no conflicts between you. This common purpose makes it possible for the Duke Legal Assistance Project to represent both of you.

**Confidentiality:** A lawyer must treat all conversations with clients as secret and confidential. When there are two clients, we keep your information confidential from other people, but we need to be able to share that information between the clients. This means that because Duke Health Justice Clinic will be representing both [client] and [co-client] in preparing legal documents, each of you must allow us to share what you say with the other person. In other words, we can tell [client] anything [co-client] tells us and we can tell [co-client] anything [client] tells us. However, we will never tell anyone else anything you tell us unless you give us permission.

**Conflicts of Interest:** Because conflicts between you could arise in the future, it is preferable that you each retain a separate lawyer. There is a conflict when what may be best for one partner is not best for the other. For example, if one of you decides you would like someone else to be your health care agent or someone else to inherit your property, there may be a conflict. Despite the possibility of a future conflict, you have decided to proceed together at this point. If a conflict does arise in the future, however, our office will withdraw from representing either of you.

If you have a major disagreement about your case in the future, Duke Health Justice Clinic may not be able to help either of you, and may have to stop from working with both of you. We hope this does not happen, but need to make sure you know this before we start work.

**Risks and Benefits of Joint Representation:** There are risks and benefits to both of you having the same lawyer. Benefits include convenience, cooperation, and cost savings. Risks include the chance that after we have worked with you both, you will have a disagreement that could force us to stop representing either of you. Then you would have to each find your own lawyer, and that may slow things down or cause other problems. Another risk is that one of you may have a secret you want to keep from the other. As your joint lawyer, we can't do this. Since there are risks to having the same lawyer, you should know that each of you is free to have your own lawyer and not use the Duke Health Justice Clinic. By choosing this joint representation, however, you each

fully waive any action or proceeding against the Duke Law School relating to or resulting from your choice to have this office represent both of you.

Understanding the risks of having one lawyer, you both still agree that Duke Health Justice Clinic will help you in preparing [list documents].

\_\_\_\_\_  
[client]

\_\_\_\_\_  
[co-client]

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Documents Intake  
Client Family Information**

Use this form early in the documents interview to identify members of client's family and important non-family members who will have a role in one or more of the documents. Please indicate if any listed family members are deceased or are minors.

Client's Name	
Spouse (legally married) and date of marriage	
Partner	
Children & age	
Step-children & age	
Mother	
Father	
Siblings (including step and half siblings)	
Grandparents	
Aunts/Uncles (if they will play a role in documents)	

Cousins (if they will play a role in documents)	
Nieces/nephews & age (if they will play a role in documents)	
Important Friends (who will play a role in documents)	
Any other people who we should know about?	
Are there any important or unusual family dynamics or conflict that we should be aware of in preparing client's documents?	



## Duke Health Justice Clinic Will Intake

**Begin** the interview with a few open ended questions to elicit the following information:

- Who are the client's immediate family members and important friends (get names)
- Any important or unusual family dynamics/conflict we should be aware of?
- What property the client has to pass in the will
- How the client wants to pass the property.
- The client's overall goals in doing a will

Only after having this open conversation should you proceed to gathering and recording the details requested in the questions below.

Client's Name	
Client's most important goals in doing a will	
Who are the most important people in client's life who will figure in the will? (name and relationship)	
Are there any important or unusual family dynamics or conflict that we should be aware of in preparing the estate plan and will?	
Has client done a will in the past?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, get a copy.

<b>Marriage Information</b>			
Current Marital Status:	<input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed <input type="checkbox"/> Married, but separated since: _____		
Spouse's Name			
Important marriage dates:	Date Married: Date Divorced: Date Widowed:		
Pre-nuptial Agreement	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Separation Agreement	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Unmarried partner name			
<b>Client's important people (family/friends):</b>			
<b>Children (use back of page if more than 5)</b>			
Name	Age	Parents	County/State
<b>Does any of these children have physical or mental disabilities? (This may require special provisions in the will)</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No Explain:		
Grandchildren	Age	Parents	County/States

<b>Parents</b>	<b>Mother</b>  <b>Father</b>
<b>Siblings</b>	
<b>Other important relatives:</b>	
<b>Important friends:</b>	1

Information about what client owns (assets)			
<b>Bank Accounts</b>		<input type="checkbox"/> None (skip to next section)	
Name of Bank/type account	Balance	Names on Account	Ownership
			<input type="checkbox"/> Sole <input type="checkbox"/> Joint <input type="checkbox"/> Joint-Survivorship <input type="checkbox"/> Other (explain)
			<input type="checkbox"/> Sole <input type="checkbox"/> Joint <input type="checkbox"/> Joint-Survivorship <input type="checkbox"/> Other (explain)
			<input type="checkbox"/> Sole <input type="checkbox"/> Joint <input type="checkbox"/> Joint-Survivorship <input type="checkbox"/> Other (explain)
			<input type="checkbox"/> Sole <input type="checkbox"/> Joint <input type="checkbox"/> Joint-Survivorship <input type="checkbox"/> Other (explain)
<b>Cash Bequests</b>		<input type="checkbox"/> None (skip to next section)	
Beneficiary	Amount	Alternate	
<b>Real Estate</b>		<input type="checkbox"/> None (skip to next section)	
<b>Primary residence – does client own?</b>		<input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, verify address			
In whose name is property titled? (list any co-owners)			

How did client acquire the property?	<input type="checkbox"/> purchased <input type="checkbox"/> inherited <input type="checkbox"/> gift
Does client have a copy of the deed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
What is the approximate market value of the home?	
Is there a mortgage or other encumbrance (eg tax lien) on the property? If so, how much?	<input type="checkbox"/> Yes <input type="checkbox"/> No Amount of mortgage(s):  If there is a mortgage on the property, does the client have a preference as to whether the mortgage would be paid off out of the estate, before passing to beneficiaries, rather than having the property pass subject to the mortgage. (Unless provided in the will, the mortgage will not be paid out of the estate unless the lender requires it.) Note that most clients will not have sufficient funds in their estate to pay off the mortgage  <input type="checkbox"/> Pay mortgage out of estate and pass property intact <input type="checkbox"/> Pass property subject to mortgage <input type="checkbox"/> Sell property in the estate and give proceeds to beneficiary
<b>Who will receive the client's home under the will?</b>	Primary:   Alternate:
<b>Other real estate owned by client (including any partial interests, eg life estate)</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Address	
County	
In whose name is property titled (list any co-owners)?	
How did client acquire the property?	<input type="checkbox"/> purchased <input type="checkbox"/> inherited <input type="checkbox"/> gift
Does the client have the deed?	<input type="checkbox"/> Yes <input type="checkbox"/> No

What is the approximate market value on the property?		
Is there a mortgage or other encumbrance (eg tax lien) on the property? If so, how much?		
<input type="checkbox"/> Yes <input type="checkbox"/> No Amount of mortgage(s)  If there is a mortgage on the property, does the client have a preference as to whether the mortgage would be paid off out of the estate, before passing to beneficiaries, rather than having the property pass subject to the mortgage. (Unless provided in the will, the mortgage will not be paid out of the estate unless the lender requires it.) Note that most clients will not have sufficient funds in their estate to pay off the mortgage  <input type="checkbox"/> Pay mortgage out of estate <input type="checkbox"/> Pass property subject to mortgage <input type="checkbox"/> Sell property in the estate and give beneficiary proceeds		
Who will receive this real estate under the will?		
Primary:   Alternate:		
Other real estate?		
<input type="checkbox"/> Yes <input type="checkbox"/> No <i>Please list on a separate sheet</i>		
<b>Motor Vehicles</b>		
<input type="checkbox"/> None		
<b>Make, model, year</b>	<b>Registered to whom?</b>	<b>Who gets this in the will?</b>

<b>Other Personal Property</b>	
<b>General Bequest of Personal Property:</b>  Most clients will leave some major chunk of personal property as a block, e.g., "all my tangible personal property."  Client can single out particular items below	Primary:  Alternate:
<b>Specific bequests</b> list specific individual items (e.g., "my Renoir painting," or blocks of items (eg, "all my jewelry," tools, household goods, etc)	
<b>Item</b>	<b>Who gets it under the Will?</b>
	Primary:  Alternate:
	Primary:  Alternate:
	Primary:  Alternate:
	Primary:  Alternate:
	Primary:  Alternate:
	Primary:  Alternate:

<b>(if additional items, list on another sheet)</b>			
<b>Life Insurance</b>		<input type="checkbox"/> None (skip to next section)	
<b>Name of company</b>	<b>Type insurance</b>	<b>Amount</b>	<b>Beneficiaries</b>
	<input type="checkbox"/> Term <input type="checkbox"/> Whole Life		
	<input type="checkbox"/> Term <input type="checkbox"/> Whole Life		
	<input type="checkbox"/> Term <input type="checkbox"/> Whole Life		
<b>Investments</b>		<input type="checkbox"/> None (skip to next section)	
Stocks			
Annuities			
Other investments			
<b>Who receives these investments under the will?</b> (use extra sheet if needed)		Primary:	
		Alternate:	
<b>Retirement Accounts – IRA’s, 401K’s, other retirement accounts</b>		<input type="checkbox"/> None (skip to next section)	
<b>Name of company</b>	<b>Balance</b>	<b>Beneficiaries</b>	



<b>Business interests</b>		<input type="checkbox"/> None (skip to next section)	
Please describe ownership interest, including whether there is stock, whether client receives a salary or other benefit, whether the business is being run by family members, value of business, etc.			
<b>Who gets it</b>		Primary:	
		Alternate:	
<b>Safe Deposit Boxes</b>		<input type="checkbox"/> None (skip to next section)	
<b>Bank</b>	<b>Whose name</b>	<b>Other owners</b>	<b>Contents &amp; value</b>
<b>Money owed to client</b>			
Does anyone owe money to the client?		<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please give details, amount, nature of the debt, etc.	
If money is owed to client, does client want the individual to pay, or forget the debt		<input type="checkbox"/> Pay <input type="checkbox"/> Forgive Details:	
<b>Client's debts</b>		<input type="checkbox"/> None, except small, routine bills	
<b>Creditor</b>	<b>Balance</b>	<b>Security, if any</b>	
<i>List any additional debts on a separate sheet</i>			

<b>Provisions for Minor Children:</b> List any beneficiaries or alternates who are minors	<input type="checkbox"/> No minor children beneficiaries	
<b>Name of child</b>	<b>Age/DOB</b>	<b>Custodial parent(s)</b>
<p><b><i>If property is being given to minor children, the will must make provisions for an adult to handle any property valued at more than \$1500, or else it will go to the Clerk of Court until the child reaches of age 18</i></b></p>		
<p><b>Tangible personal property:</b> Is the client willing for tangible personal property of any value to be held for the minor’s benefit by the child’s custodian (parent or guardian)?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No  If no, what arrangements does client want?	
<p><b>Intangible personal property (money, stock); real estate:</b>  <i>This property must be held by an authorized adult or go to clerk of court. We recommend that the will establish a trust to hold property for a minor</i></p>		
<b>Trust Provisions</b>		
<p><b>Purpose:</b> “For the support and education of the minor child” unless otherwise specified. Is this ok?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No  If no, specify alternate purpose language:	
<b>Trustee</b>		
<b>Alternate Trustee</b>		
<b>Age at which trust ends. 18 is minimum age</b>		

<p><b>If multiple children, does the client want a single “pooled” trust (which ends when youngest reaches designated age), or separate trusts for each child</b></p>	<p><input type="checkbox"/> Pooled  <input type="checkbox"/> Separate trusts for each child                  (if separate, specify whether the trustee/purpose is the same for each)</p>
<p><b>Limitations on trustee’s authority (e.g., only allow distribution of interest)</b></p>	
<p><b>Other Trust Needs</b></p>	
<p>If any beneficiary receives needs-based public benefits, such as Medicaid or SSI, the beneficiary could lose those benefits as a result of receiving an inheritance from client.                   Is client aware of any of her/his beneficiaries receiving SSI or Medicaid?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No                   If yes, please get details and discuss with supervising attorney. Tell client a special trust may be needed to protect the beneficiaries public benefits.</p>
<p><b>Other Provisions</b></p>	
<p><b>Guardianship Provision:</b> Is there someone client wants to nominate as guardian of minor children?</p>	<p>Name:</p>
<p><b>Executor</b></p>	<p>Name:                   County (city/state if not NC):</p>
<p><b>Alternate Executor</b></p>	<p>Name:                   County (city/state if not NC):</p>
<p><b>Why Left Out Clause</b></p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No                  Specifics:</p>
<p><b>Payment for transportation.</b>                  Does the client want his/her estate to pay the cost of transporting personal property to a beneficiary? (Note this is standard unless deleted)</p>	<p><input type="checkbox"/> Yes (pay for transportation)  <input type="checkbox"/> No</p>
<p><b>Forgiveness of Debt:</b> If one of the client’s children owes the client money at the time of death, would the client want that debt forgiven and canceled?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p><b>Disposition of remains:</b></p>	<p><input type="checkbox"/> Burial  <input type="checkbox"/> Cremation</p>
<p><b>Other: Ask the client if there is anything else he or she wants to include in the will.</b></p>	

[This document was prepared by [Supervising Attorney], Duke Health Justice Clinic, Box 90360, Durham, NC 27708, (919) 613-7169.]

**LAST WILL OF  
[TESTATOR'S NAME]**

I, [name of testator], domiciled in [name of county] County, North Carolina, declare this to be my last will, hereby revoking all wills and codicils heretofore made by me.

At the time of the execution of this Will, my immediate family group consists of my children, [names of children].

**I.**

I direct that all my just debts, my funeral and burial or cremation expenses, and the cost of administration of my estate be paid out of the assets of my estate as soon as practicable after my death. However, I direct that my Executor may cause any debt to be carried, renewed, and refinanced from time to time and upon such terms as my Executor may deem advisable taking into consideration the best interest of the beneficiaries hereunder. Provided further that any debts that could be barred by the applicable statutes of limitation shall not be paid as a debt of my estate.

**II.**

I direct that all taxes (including any interest and penalties thereon) imposed by any taxing authority because of my death shall be paid by my Executor out of my residuary estate, specifically including taxes on life insurance and other non-probate assets.

**III.**

I give my tangible personal property, including my automobiles, in shares of equal value,

to my children who survive me. If any of my children predecease me, then that child's share shall be distributed equally among my surviving children. If none of my children survive me, I give the same to [alternate beneficiary].

My Executor shall have the sole discretion to divide the property among my children, taking into consideration their wishes.

I may leave a writing, which, although not a part of my Will, expresses my desires concerning the disposition of my tangible personal property. I request, but do not require, that my wishes as set forth in any such writing be observed.

If any beneficiary of my tangible personal property has not reached the age of 18 at the time of my death, my Executor shall deliver that minor child's share, regardless of value, to that child's parent, legal guardian or other adult who has custody of him or her, and that person's receipt shall operate as a full release of my Executor.

If it becomes necessary to incur expenses of shipment to complete the delivery of my tangible personal property to a beneficiary, my estate and not the beneficiary who is to receive that bequest shall arrange for and pay the costs of shipment incurred in making such delivery.

#### IV.

I give all of the rest, residue, and remainder of my property of every sort, kind and description, both real and personal, absolutely and in fee simple, in equal shares, to my children, who survive me and who have reached the age of 18. If any of my children predecease me, then that child's share shall be distributed equally among my remaining children. In the event that any of my children have not reached the age of 18 at the time of my death, then and in that event, I give, absolutely and in fee simple the share of any such child to my Trustee(s), hereinafter named, IN TRUST, pursuant to the terms of Article V of this Will.

My Executor shall have the sole discretion to divide the property among my children, taking into consideration their wishes.

If none of my children survive me, I give the same to [alternate beneficiary].

V.

If property is distributed to my Trustee under the terms of this Will, it shall be administered pursuant to the following terms and conditions:

A. Purpose of Trust. The purpose of this trust is to provide for the support and education of my children who survive me.

B. Appointment of Trustee. I name [trustee name] of [trustee's county] County, North Carolina, as trustee. If the appointment of a substitute or successor trustee becomes necessary, I name [alternate trustee] of [alternate's county] County, North Carolina. If the appointment of additional successor trustees is necessary, the last serving trustee shall have the right to make such appointment, without court order, in a writing signed by the last serving trustee. Any trustee shall have the right to resign, without court order, at any time in a writing signed by the trustee with such resignation to be effective upon the acceptance of the trusteeship by a successor trustee.

C. Insurance Proceeds. Any insurance company or other parties who shall become indebted to any minor child of mine on account of my death, are hereby expressly directed to pay the funds to my Trustee(s) named herein, for the benefit of such child to the same extent as if that party had been appointed by the Court as Guardian of my child.

D. Powers of Trustees. The trustees shall have full and complete discretion to use the principal and income of the trust in the manner the trustee best sees fit for the benefit of my surviving children. Without in any way limiting the foregoing purposes, powers and authority,

the trustees shall have all of the powers set forth and described in Article 3, Chapter 32 of the General Statutes of North Carolina relating to the powers of fiduciaries as they exist at the time I sign this Will, which are hereby incorporated into this Will. The trustees shall not be required to file in any court or with any public officials or to the beneficiaries of the trust, any reports or accounts relating to the administration of the trusts, except to the extent I have no powers to excuse the filing of such reports or accounts. I direct that no bond or other security be required of my Trustee or any successor trustee for the performance of duties as the trustee.

E. Termination of the Trust. The trust shall terminate when the youngest child who is the beneficiary of the trust reaches the age of [any age 18 or up] or is no longer living. Upon termination, the remaining principal and income of the trust shall be distributed by the trustee to the children who are the beneficiaries of the trust, with the share of any child who is not living at the termination of the trust to go to that child's issue, if any, and if there are no issue, then that share shall be distributed by the trustee to those of my children then living in such shares as the trustee shall determine in the trustee's sole discretion. [Alternate beneficiary?]

F. Payment by Executor to Trustee. The written receipt of the trustee shall operate as a full release and discharge of my Executor of the property transferred by the executor to the trustee.

## VI.

I nominate [name of guardian] of [county and state] as guardian of the persons of my children who are unmarried minors at the time of my death. If the appointment of a substitute or successor guardian becomes necessary, I nominate [alternate guardian] of [county and state] as guardian. I direct that no bond or other security be required of the guardian in any jurisdiction for the performance of the duties as guardian.

VII.

If any beneficiary and I should die under circumstances as would render it doubtful whether the beneficiary or I died first, or if any beneficiary should die within thirty (30) days of me, then it shall be conclusively presumed for purposes of this my Will that said beneficiary predeceased me.

VIII.

In this Will, the terms "executor" and "testator" are used to refer to both male and female individuals, in lieu of using the terms "executrix" and "testatrix."

IX.

I appoint [executor's name], of [name of county] County, [state], to be executor of this my last will. If [executor's name] shall predecease me or for any reason shall fail to qualify as executor hereunder, or having qualified, shall die or resign, then I appoint [alternate's name] of [county] County, [state] as substitute or successor executor. My Executor, and any successor, shall serve without bond.

X.

I give and grant to my Executor and to any successor executor all of the powers enumerated in North Carolina General Statutes Section 32-27 and Section 28A-13-3, which powers are hereby incorporated by reference and shall be considered a part of this Will. These powers are granted pursuant to North Carolina General Statutes Section 32-26 and shall be in addition to and not in limitation of the common law and statutory powers of fiduciaries.



XI.

Unless otherwise directed in this Will, whenever the Executor or the Trustee of any trust under this Will is directed to distribute any money or property to a person who is under twenty-one years of age on the date of such distribution, the Executor or Trustee shall be authorized to make such distribution to an adult person duly appointed by such Executor or Trustee as custodian for such person under the North Carolina Uniform Transfers to Minors Act.

I, [testator's name], the testator, sign my name to this instrument this \_\_\_\_\_ day of \_\_\_\_\_, [current year], and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
[testator's name]

We, \_\_\_\_\_, and \_\_\_\_\_, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs or places [her/his] mark before me and executes this instrument as [her/his] last will and that [she/he] signs it willingly (or willingly directs another to sign for [her/him]), and that each of us, in the presence and hearing of the testator, hereby signs this Will as witness to the testator's signing, and to the best of our knowledge, the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

Subscribed, sworn to and acknowledged before me by [testator's name] the testator, and  
subscribed and sworn to before me by witnesses, \_\_\_\_\_, and

\_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_,

20\_\_\_\_.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires:\_\_\_\_\_

[This document was prepared by [Supervising Attorney], Duke Health Justice Clinic, Box 90360, Durham, NC 27708-0360, 919-613-7169]

**LAST WILL OF**

**[TESTATOR'S NAME]**

I, [name of testator], domiciled in [name of county] County, North Carolina, declare this to be my last will, hereby revoking all wills and codicils heretofore made by me.

At the time of the execution of this Will, my immediate family group consists of my children, [names of children].

**I.**

I direct that all my just debts, my funeral and burial or cremation expenses, and the cost of administration of my estate be paid out of the assets of my estate as soon as practicable after my death. However, I direct that my Executor may cause any debt to be carried, renewed, and refinanced from time to time and upon such terms as my Executor may deem advisable taking into consideration the best interest of the beneficiaries hereunder. Provided further that any debts that could be barred by the applicable statutes of limitation shall not be paid as a debt of my estate.

**II.**

I direct that all taxes (including any interest and penalties thereon) imposed by any taxing authority because of my death shall be paid by my Executor out of my residuary estate, specifically including taxes on life insurance and other non-probate assets.

**III.**

I give to [name of beneficiary], if [s/he] shall survive me, all the tangible personal property which I own at the time of my death, including motor vehicles. If [beneficiary] does

not survive me, I give the same to [alternate beneficiary]. [If multiple beneficiaries, include this sentence: My Executor shall have the sole discretion to divide the property into such shares as he or she sees fit, taking into consideration the wishes of beneficiaries.]

I may leave a writing, which, although not a part of my Will, expresses my desires concerning the disposition of my tangible personal property. I request, but do not require, that my wishes as set forth in any such writing be observed.

If, with respect to the above made bequests, to effect delivery of my tangible personal property to a beneficiary, it becomes necessary to incur expenses of shipment to complete the delivery, my estate and not the beneficiary who is to receive that bequest shall arrange for and pay the costs of shipment incurred in making such delivery.

#### IV.

I give all the rest, residue and remainder of my estate to [name of beneficiary], if [s/he] survives me. If [name of beneficiary] does not survive me, I give all the rest, residue and remainder of my estate to [alternate beneficiary].

#### V.

If any beneficiary and I should die under circumstances as would render it doubtful whether the beneficiary or I died first, or if any beneficiary should die within thirty (30) days of me, then it shall be conclusively presumed for purposes of this my will that said beneficiary predeceased me.

VI.

In this Will, the terms "executor" and "testator" are used to refer to both male and female individuals, in lieu of using the terms "executrix" and "testatrix."

VII.

I appoint [executor], of [county] County, North Carolina, to be executor of this my last will. If [executor] shall predecease me or for any reason shall fail to qualify as executor hereunder, or having qualified, shall die or resign, then I appoint [alternate executor], of [county] County, North Carolina as substitute or successor executor. My executor, and any successor, shall serve without bond.

VIII.

I give and grant to my Executor and to any successor executor all of the powers enumerated in North Carolina General Statutes Section 32-27 and Section 28A-13-3, which powers are hereby incorporated by reference and shall be considered a part of this Will. These powers are granted pursuant to North Carolina General Statutes Section 32-26 and shall be in addition to and not in limitation of the common law and statutory powers of fiduciaries.

IX.

Unless otherwise directed in this Will, whenever the executor or the trustee of any trust under this Will is directed to distribute any money or property to a person who is under twenty-one years of age on the date of such distribution, the executor or trustee shall be authorized to make such distribution to an adult person duly appointed by such executor or trustee as custodian for such person under the North Carolina Uniform Transfers to Minors Act.

I, [name of testator], the testator, sign my name to this instrument this \_\_\_\_\_ day of \_\_\_\_\_, [current year], and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
[Testator's name]

We, \_\_\_\_\_, and \_\_\_\_\_, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs or places [her/his] mark before me and executes this instrument as [her/his] last will and that [she/he] signs it willingly (or willingly directs another to sign for [her/him]), and that each of us, in the presence and hearing of the testator, hereby signs this Will as witness to the testator's signing, and to the best of our knowledge, the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

Subscribed, sworn to and acknowledged before me by [Testator's name], the testator, and  
subscribed and sworn to before me by witnesses, \_\_\_\_\_, and  
\_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission expires: \_\_\_\_\_

[This document was prepared by [Supervising Attorney], Duke Health Justice Clinic, Box 90360, Durham, NC 27708, (919) 613-7169.]

**LAST WILL OF  
[TESTATOR'S NAME]**

I, [name of testator], domiciled in [name of county] County, North Carolina, declare this to be my last will, hereby revoking all wills and codicils heretofore made by me.

At the time of the execution of this Will, my immediate family group consists of my husband, [husband] name, (referred to in this Will as "husband") and my children, [children's names].

I.

I direct that all my just debts, my funeral and burial or cremation expenses, and the cost of administration of my estate be paid out of the assets of my estate as soon as practicable after my death. However, I direct that my Executor may cause any debt to be carried, renewed, and refinanced from time to time and upon such terms as my Executor may deem advisable taking into consideration the best interest of the beneficiaries hereunder. Provided further that any debts that could be barred by the applicable statutes of limitation shall not be paid as a debt of my estate.

II.

I direct that all taxes (including any interest and penalties thereon) imposed by any taxing authority because of my death shall be paid by my Executor out of my residuary estate, specifically including taxes on life insurance and other non-probate assets.



III.

I give to my [husband], if he shall survive me, all the tangible personal property which I own at the time of my death, including motor vehicles. If my husband does not survive me, I give the same in shares of equal value to my children who survive me. If any of my children predecease me, then that child's share shall be distributed equally among my surviving children. If none of my children survive me, I give the same to [alternate beneficiary].

My executor shall have the sole discretion to divide the property among my children, taking into consideration their wishes.

I may leave a writing, which, although not a part of my Will, expresses my desires concerning the disposition of my tangible personal property. I request, but do not require, that my wishes as set forth in any such writing be observed.

If any beneficiary of my tangible personal property has not reached the age of 18 at the time of my death, my Executor shall deliver that minor child's share, regardless of value, to that child's parent, legal guardian or other adult who has custody of him or her, and that person's receipt shall operate as a full release of my Executor.

If it becomes necessary to incur expenses of shipment to complete the delivery of my tangible personal property to a beneficiary, my estate and not the beneficiary who is to receive that bequest shall arrange for and pay the costs of shipment incurred in making such delivery.

IV.

I give all the rest, residue and remainder of my estate to my husband, if he survives me. If my said husband does not survive me, I give the same in shares of equal value among my children who survive me. If any of my children predecease me, then that child's share shall be distributed equally among my surviving children. If none of my children survive me, I give the

same to [alternate beneficiary].

V.

If any beneficiary and I should die under circumstances as would render it doubtful whether the beneficiary or I died first, or if any beneficiary should die within thirty (30) days of me, then it shall be conclusively presumed for purposes of this my will that said beneficiary predeceased me.

VI.

In this Will, the terms "executor" and "testator" are used to refer to both male and female individuals, in lieu of using the terms "executrix" and "testatrix."

VII.

I appoint [executor], of [county] County, North Carolina, to be executor of this my last will. If [executor] shall predecease me or for any reason shall fail to qualify as executor hereunder, or having qualified, shall die or resign, then I appoint [alternate executor], of [county] County, North Carolina as substitute or successor executor. My executor, and any successor, shall serve without bond.

VIII.

I give and grant to my Executor and to any successor Executor all of the powers enumerated in North Carolina General Statutes Section 32-27 and Section 28A-13-3, which powers are hereby incorporated by reference and shall be considered a part of this Will. These powers are granted pursuant to North Carolina General Statutes Section 32-26 and shall be in addition to and not in limitation of the common law and statutory powers of fiduciaries.

IX.

Unless otherwise directed in this Will, whenever the Executor or the Trustee of any trust under this Will is directed to distribute any money or property to a person who is under twenty-one years of age on the date of such distribution, the Executor or Trustee shall be authorized to make such distribution to an adult person duly appointed by such Executor or Trustee as custodian for such person under the North Carolina Uniform Transfers to Minors Act.

I, [name of testator], the testator, sign my name to this instrument this \_\_\_\_\_ day of \_\_\_\_\_, [current year], and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
[Testator's name]

We, \_\_\_\_\_, and \_\_\_\_\_, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testatrix signs or places her mark before me and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the testatrix, hereby signs this will as witness to the testatrix's signing, and to the best of our knowledge, the testatrix is eighteen years

of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

Subscribed, sworn to and acknowledged before me by [Testator's name], the testatrix,  
and subscribed and sworn to before me by witnesses, \_\_\_\_\_, and  
\_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission expires: \_\_\_\_\_

[This document was prepared by [Supervising Attorney], Duke Health Justice Clinic, Box 90360, Durham, NC 27708, (919) 613-7169.]

**LAST WILL OF  
[TESTATOR'S NAME]**

I, [name of testator], domiciled in [name of county] County, North Carolina, declare this to be my last will, hereby revoking all wills and codicils heretofore made by me.

At the time of the execution of this Will, my immediate family group consists of my wife, [wife] name, (referred to in this Will as "wife") and my children, [children's names].

I.

I direct that all my just debts, my funeral and burial or cremation expenses, and the cost of administration of my estate be paid out of the assets of my estate as soon as practicable after my death. However, I direct that my Executor may cause any debt to be carried, renewed, and refinanced from time to time and upon such terms as my Executor may deem advisable taking into consideration the best interest of the beneficiaries hereunder. Provided further that any debts that could be barred by the applicable statutes of limitation shall not be paid as a debt of my estate.

II.

I direct that all taxes (including any interest and penalties thereon) imposed by any taxing authority because of my death shall be paid by my Executor out of my residuary estate, specifically including taxes on life insurance and other non-probate assets.

III.

I give to my [wife], if she shall survive me, all the tangible personal property which I own at the time of my death, including motor vehicles. If my wife does not survive me, I give the same in shares of equal value to my children who survive me. If any of my children predecease me, then that child's share shall be distributed equally among my surviving children. If none of my children survive me, I give the same to [alternate beneficiary].

My executor shall have the sole discretion to divide the property among my children, taking into consideration their wishes.

I may leave a writing, which, although not a part of my Will, expresses my desires concerning the disposition of my tangible personal property. I request, but do not require, that my wishes as set forth in any such writing be observed.

If any beneficiary of my tangible personal property has not reached the age of 18 at the time of my death, my Executor shall deliver that minor child's share, regardless of value, to that child's parent, legal guardian or other adult who has custody of him or her, and that person's receipt shall operate as a full release of my Executor.

If it becomes necessary to incur expenses of shipment to complete the delivery of my tangible personal property to a beneficiary, my estate and not the beneficiary who is to receive that bequest shall arrange for and pay the costs of shipment incurred in making such delivery.

IV.

I give all the rest, residue and remainder of my estate to my wife, if she survives me. If my said wife does not survive me, I give the same in shares of equal value among my children who survive me. If any of my children predecease me, then that child's share shall be distributed equally among my surviving children. If none of my children survive me, I give the same to

[alternate beneficiary].

V.

If any beneficiary and I should die under circumstances as would render it doubtful whether the beneficiary or I died first, or if any beneficiary should die within thirty (30) days of me, then it shall be conclusively presumed for purposes of this my will that said beneficiary predeceased me.

VI.

In this Will, the terms "executor" and "testator" are used to refer to both male and female individuals, in lieu of using the terms "executrix" and "testatrix."

VII.

I appoint [executor], of [county] County, North Carolina, to be executor of this my last will. If [executor] shall predecease me or for any reason shall fail to qualify as executor hereunder, or having qualified, shall die or resign, then I appoint [alternate executor], of [county] County, North Carolina as substitute or successor executor. My executor, and any successor, shall serve without bond.

VIII.

I give and grant to my Executor and to any successor Executor all of the powers enumerated in North Carolina General Statutes Section 32-27 and Section 28A-13-3, which powers are hereby incorporated by reference and shall be considered a part of this Will. These powers are granted pursuant to North Carolina General Statutes Section 32-26 and shall be in addition to and not in limitation of the common law and statutory powers of fiduciaries.

IX.

Unless otherwise directed in this Will, whenever the Executor or the Trustee of any trust under this Will is directed to distribute any money or property to a person who is under twenty-one years of age on the date of such distribution, the executor or trustee shall be authorized to make such distribution to an adult person duly appointed by such executor or trustee as custodian for such person under the North Carolina Uniform Transfers to Minors Act.

I, [name of testator], the testator, sign my name to this instrument this \_\_\_\_\_ day of \_\_\_\_\_, [current year], and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
[Testator's name]

We, \_\_\_\_\_, and \_\_\_\_\_, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs or places her mark before me and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and to the best of our knowledge, the testator is eighteen years of



age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

Subscribed, sworn to and acknowledged before me by [Testator's name], the testator, and  
subscribed and sworn to before me by witnesses, \_\_\_\_\_, and  
\_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission expires: \_\_\_\_\_

## HOW TO REVOKE A LAST WILL

You may decide that you would like to revoke or cancel your Last Will.

The best way to do it is by signing a new will. Another way to do it is by a physical act, such as destroying your Will, if done with the intent to revoke the Will. The destruction of your will must be done by you or someone in your presence who is directed by you to do so.

NOTE: If you marry or divorce after you have executed your will, please contact an attorney. These actions may change the way your property is to pass upon your death. Also, your desires may have changed.

If you have any questions about how to revoke a will, please do not hesitate to contact us.

Duke Health Justice Clinic  
Duke Law School  
Box 90360  
Durham, NC 27708-0360  
Tel: (919) 613-7169

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

CODICIL

I, \_\_\_\_\_, of the County of \_\_\_\_\_, State of North Carolina, declare this to be the First Codicil to the Last Will and Testament executed by me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

I hereby revoke Paragraph \_\_\_\_ of Article \_\_\_\_ of my said Will.

I hereby revoke Paragraph \_\_\_\_ and \_\_\_\_ of Article \_\_\_\_\_ of my said Will and in lieu thereof, I substitute the following:

A. Appointment of Trustee. I nominate, constitute, and appoint \_\_\_\_\_, as Trustee of any and all trusts created hereunder. I further direct that my Trustee shall be compensated for her services at her normal, reasonable rate existing at the time of my death.

B. Appointment of Executror/ix. I nominate, constitute, and appoint \_\_\_\_\_ as executrix of this my Last Will and Testament. If my said Executrix shall predecease me or fail to qualify, or, if having qualified, should die, resign, or become incapacitated during the administration of my estate, or cease to act as Executrix hereunder for any reason whatsoever, then I nominate, constitute, and appoint \_\_\_\_\_, as successor Executrix, to serve in the place and stead of my said Executrix. I further direct that my successor Executrix shall be compensated for her services as successor Executrix at her normal, reasonable rate existing at the time of my death.

In all other respects, I hereby ratify and confirm all of the provisions of my said Last Will and Testament dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

I, [Testor's name] , the testator, sign my name to this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
[Testor's name]

We, \_\_\_\_\_, and \_\_\_\_\_, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs or places her/his mark before me and executes this instrument as her/his last will and that she/he signs it willingly (or willingly directs another to sign for her/him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and to the best of our knowledge, the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

Subscribed, sworn to and acknowledged before me by [Testor's name], the testator, and subscribed and sworn to before me by witnesses, \_\_\_\_\_, and \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, [current year].

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission expires: \_\_\_\_\_