

Index

ABATEMENT

Construction of wills, **8:5**

ACCEPTANCE

Durable powers of attorney, **20:13**

ACKNOWLEDGMENT

Signature by testator, **3:4**

ACTIVE TRUSTS

Trusts, **22:9**

ACTS OF INDEPENDENT SIGNIFICANCE

Generally, **7:4**

ADOPTED CHILD

Intestacy, **16:8**

ADVANCEMENTS

Intestacy, **16:16**

AGENTS

Durable powers of attorney, **20:8,**
20:9

Resignation, durable powers of
attorney, **20:12**

ALIENATION

Revocation, operation of law, **9:12**

ALIENS

Inheritance by, intestacy, **16:12**

AMENDMENT

Powers of appointment, **21:8**

Revocable trusts, **27:3**

ANCESTRAL PROPERTY

Intestacy, **16:4**

ANIMALS

Trusts for, **24:6**

APPOINTEE PROPERTY

Creditors rights, **21:22**

Disclaiming, **21:21**

ARTIFICIAL INSEMINATION

Intestacy, **16:11**

ATTESTATION

Clause, **3:8**

Purpose, **3:7**

Subscription, **3:7**

Written will, **3:6**

ATTESTED WRITTEN WILLS

Generally, **3:1 to 3:15**

Acknowledgment, signature by testa-
tor, **3:4**

Attestation

clause, **3:8**

purpose, **3:7**

subscription, **3:7**

written will, **3:6**

Competency of witnesses, **3:10, 3:11**

Interest affecting competency, **3:11**

Safe-keeping, **3:15**

Self-proved wills, **3:9**

Signature of testator, **3:2 to 3:4**

Testamentary intent, **3:5**

Witness signature

presence of each other, **3:14**

presence of testator, **3:12**

testator's request, **3:14**

ATTORNEYS

Duty to correct mistakes, **2:8**

BENEFICIARIES

Modification or termination of trust,
25:3

BLANKET EXERCISE CLAUSES

Powers of appointment, **21:11**

BREACH

Durable powers of attorney, reme-
dies, **20:11**

CANONS OF DESCENT

Intestacy, **16:3**

CAPACITY

Revocable trusts, **27:2**

CHARITABLE TRUSTS

Trusts, **22:11, 24:4**

CHOICE OF LAW

Powers of appointment, **21:3, 23A:3**

CLASS GIFTS

Construction of wills, **8:14**

CODICILS

Generally, **2:6**

Nuncupative wills, **5:8**

Republication, **7:2**

COMMON LAW

North Carolina Uniform Trust Code
(NCUTC), **23:4**

COMPENSATION

Office of trustee, **28:11**

COMPETENCY

Interest affecting competency,
attested written wills, **3:10**

Witnesses, attested written wills, **3:10**

CONSTRUCTION OF WILLS

Generally, **8:1 to 8:20**

Abatement, **8:5**

Ademption

generally, **8:7, 8:8**

Assent of personal representative,
8:17

change from realty to personalty,
8:17

personalty, **8:17**

realty, **8:17**

Charge on devises, **8:6**

Class gifts, **8:14**

Description, **8:2**

Devises, **8:1**

accretions, **8:9**

income, **8:9**

Distribution, **8:20**

Election, **8:11**

Exoneration, **8:5**

Gifts to creditors, **8:15**

Lapsed devises, **8:13**

CONSTRUCTION OF WILLS

—Cont'd

Property subject to testamentary dis-
position, **8:3**

Release of expectancy, **8:16**

Renunciation, **8:10**

Surviving spouse, election, **8:12**

Transfer of expectancy, **8:16**

Void devises, **8:13**

CONSTRUCTIVE TRUSTS

Trusts, **22:5**

CONTINGENT REMAINDERS

Misconduct, loss of property rights,
18:8

CONTRACTS

To make will, **6:3**

Powers of appointment, to exercise or
not exercise, **21:18**

COSTRUSTEES

Office of trustee, **28:4**

COURT ORDER

Modification or termination of trust,
25:4

CREDITORS

Claim against settlor, **26:5**

Claims, generally, **23B:1**

Claims, of beneficiary, **26:1**

Rights against trustee, **23B:6, 26:6**

CUSTODIAL TRUSTS

Trusts, **22:10**

CY PRES

Modification or termination, **25:6**

DECANTING

Trusts, **24:8**

**DEFINITE BENEFICIARY
REQUIREMENT**

Trusts, **24:3**

DEFINITIONS

Holographic wills, **4:1**

Nuncupative wills, **5:1**

Powers of appointment, **21:2, 23A:2**

Survivorship and simultaneous death,
17:3

INDEX

DEFINITIONS—Cont'd

Trusts, **22:2**

Wills, **2:1**

DEFINITIONS

North Carolina Uniform Trust Code
(NCUTC), **23:2**

DELIRIUM

Testamentary capacity, **10:6**

DELIVERY

Instrument of renunciation, **16A:7**

DESCRIPTION

Construction of wills, **8:2**

DESTROYED WILLS

Revocation, **9:7**

DEWISEES

Accretions, **8:9**

Construction of wills, **8:1**

Income, **8:9**

DEVISES

Lapsed, **8:13**

Void, **8:13**

DISCRETIONARY TRUSTS

Generally, **23B:3, 26:3**

DISTRIBUTION

Construction of wills, **8:20**

DIVORCE

Revocable trusts, lapse, **27:6**

Revocation, operation of law, **9:11**

DRUG USAGE

Testamentary capacity, **10:6**

DRUNKENNESS

Testamentary capacity, **10:6**

DURABILITY

Durable powers of attorney, **20:2**

DURABLE POWERS OF ATTORNEY

Generally, **20:1 to 20:15**

Acceptance, **20:13**

Agent resignation, **20:12**

Agents, **20:8, 20:9**

Breach, remedies, **20:11**

DURABLE POWERS OF

ATTORNEY—Cont'd

Dispute procedures, **20:2**

Durability, **20:2**

Duties, agents, **20:9**

Effect, time, **20:6**

Execution, **20:3**

Grant of authority, **20:14**

Guardian nomination, **20:5**

Procedures, disputes, **20:10**

Reliance, **20:13**

Remedies for breach, **20:11**

Resignation of agent, **20:12**

Statutory forms, **20:15**

Termination, **20:7**

Validity, **20:4**

ECCENTRICITY

Testamentary capacity, **10:7**

ELECTIONS

Construction of wills, **8:11**

Surviving spouse, **8:12**

ELECTIVE LIFE ESTATE

Generally, **15:5**

ELECTIVE SHARE

Surviving spouse's right, **14:1 to
14:4**

ESCHEAT

Intestacy, **16:17**

ESTATES BY ENTIRETY

Misconduct, loss of property rights,
18:5

EVIDENCE

Revocation by physical act, **9:6**

Undue influence, **11:2**

EXECUTION

Durable powers of attorney, **20:3**

EXECUTORY INTERESTS

Misconduct, loss of property rights,
18:8

EXONERATION

Construction of wills, **8:5**

EXPRESS TRUSTS

Trusts, **22:5**

FIDUCIARIES

Court power, appointment, **28:6**

Decanting, **24:8**

Renunciation, **16A:5, 19:5**

FILING

Renunciation, **16A:6, 19:6**

FRAUD

Grounds for contest

generally, **12:1 to 12:4**

in the execution, **12:3**

in the inducement, **12:2**

remedies for fraud, **12:4**

Revocation, **9:8**

FREEDOM OF TESTATION

Generally, **1:2**

GENERAL PRINCIPLES

Generally, **2:1 to 2:8**

Attorney's duty to correct mistakes,
2:8

Character of wills, **2:3**

Codicils, **2:6**

Definitions, **2:7**

Forms of wills, **2:4**

Gifts causa mortis, wills
distinguished, **2:5**

Kinds of wills, **2:2**

Will definition, **2:1**

GIFTS

To creditors, **8:15**

GIFTS CAUSA MORTIS

Wills distinguished, **2:5**

GRATUITOUS TRANSFERS

Survivorship and simultaneous death,
application, **17:5**

GUARDIAN NOMINATION

Durable powers of attorney, **20:5**

HALF-BLOOD INHERITANCE

Intestacy, **16:5**

HEARSAY

Undue influence, **11:3**

HOLOGRAPHIC WILLS

Generally, **4:1 to 4:9**

Definition, **4:1**

Handwriting of testator, **4:4**

Probate, **4:9**

Requirements, **4:3**

Revocation, **4:8**

ILLEGITIMATES

Intestacy inheritance, **16:9**

IMPLIED TRUSTS

Trusts, **22:5**

IN VITRO FERTILIZATION

Intestacy, **16:11**

**INCORPORATION BY
REFERENCE**

Generally, **7:3**

INSANITY

Delusions, testamentary capacity,
10:5

Testamentary capacity, **10:4**

INSURANCE BENEFITS

Misconduct, loss of property rights,
18:11

INTEGRATION

Wills, **7:1**

INTESTACY

Generally, **16:1 to 16:17**

Adopted child, **16:8**

Advancements, **16:16**

Aliens, inheritance by, **16:12**

Ancestral property, **16:4**

Artificial insemination, **16:11**

Canons of descent, **16:3**

Degrees of relationship, **16:15**

Distribution among classes, **16:14**

Escheat, **16:17**

Illegitimates, inheritance by, **16:9**

Inheritance by half-blood, **16:5**

Legitimated children, inheritance,
16:10

Order of succession, **16:6, 16:7**
shares of other persons, **16:7**

surviving spouse, **16:6**

Partial intestacy, **16:2**

INDEX

INTESTACY—Cont'd

- Posthumous heirs, **16:13**
- Statute of distribution, repealed, **16:3**
- In vitro fertilization, **16:11**

JOINT WILLS

- Generally, **6:1**

JUDICIAL PROCEEDINGS

- North Carolina Uniform Trust Code (NCUTC), **23:11**

JURISDICTION

- Generally, **1:1**

LEGITIMATED CHILDREN

- Inheritance by, intestacy, **16:10**

LOST WILLS

- Revocation, **9:7**

MARRIAGE

- Revocation, operation of law, **9:9**

MENTAL CAPACITY

- Proving, testamentary capacity, **10:8**

MILITARY PERSONNEL WILLS

- Nuncupative wills, **5:13**

MISCONDUCT

- Loss of property rights
 - generally, **18:1 to 18:15**
 - construction, **18:15**
 - contingent remainders, **18:8**
 - divesting of interests in property, **18:9**
 - estates by entirety, **18:5**
 - executory interests, **18:8**
 - insurance benefits, **18:11**
 - killing of decedent, **18:4**
 - parental rights, **18:3**
 - persons acquiring from slayer
 - protected, **18:12**
 - powers of appointment, **18:10**
 - record determining slayer, **18:13**
 - reversions, **18:7**
 - revocation, **18:10**
 - spousal rights, **18:2**
 - survivorship property, **18:6**
- Uniform Simultaneous Death Act,
 - not applicable, **18:14**

MISCONDUCT—Cont'd

- Loss of property rights—Cont'd
 - vested remainders, **18:7**

MISTAKE AND SECRET TRUSTS

- Grounds for contest
 - generally, **13:1 to 13:6**
 - identity of the instrument, **13:2**
 - law of mistake, **13:5**
 - legal effect, mistake, **13:3**
 - contents, **13:4**
 - secret trusts, **13:2**

MISTAKES

- Attorney's duty to correct, **2:8**

MODIFICATION

- Revocable trusts, **27:7**

MODIFICATION OR TERMINATION

- Generally, **25:1 to 25:6**
- Beneficiaries, **25:3**
- Court order, **25:4**
- Cy pres, **25:6**
- Trustee, **25:5**

MUTUAL WILLS

- Generally, **6:2**
- Revocation, **9:13**

NONCHARITABLE TRUSTS

- Without ascertainable beneficiaries, **24:7**

NONJUDICIAL SETTLEMENTS

- North Carolina Uniform Trust Code (NCUTC), **23:9**

NORTH CAROLINA UNIFORM TRUST CODE (NCUTC)

- Generally, **22:12, 23:1 to 23:11**
- Applicable law, **23:6**
- Common law, **23:4**
- Default rules, **23:4**
- Definitions, **23:2**
- Judicial proceedings, **23:11**
- Knowledge, **23:3**
- Location of administration, **23:7**
- Mandatory rules, **23:4**
- Nonjudicial settlements, **23:9**
- Notice, **23:8**

**NORTH CAROLINA UNIFORM
TRUST CODE (NCUTC)**

—Cont'd

Rules of construction, **23:10**

NOTICE

North Carolina Uniform Trust Code
(NCUTC), **23:8**

NUNCUPATIVE WILLS

Generally, **5:1 to 5:13**

Characteristics, **5:12**

Codicil, **5:8**

Definition, **5:1**

Form, **5:8**

Military personnel wills, **5:13**

Probate, **5:9**

Reduced to writing requirement, **5:5**

Requisites, **5:3**

Revocation, **5:11**

Safe-keeping requirement, **4:6**

Testamentary intent, **4:7**

Testator

intention, **5:4**

last illness, **5:6**

Testator signature, **4:5**

Witnesses, **5:7**

OLD AGE

Testamentary capacity, **10:7**

ORAL TRUSTS

Trusts, **24:5**

**OVERDUE MANDATORY
DISTRIBUTIONS**

Generally, **23B:4**

Creditors' rights, **26:4**

PARENTAL RIGHTS

Misconduct, loss of property rights,
18:3

PAROL TRUSTS

Trusts, **22:5**

PARTIAL INTESTACY

Generally, **16:2**

PASSIVE TRUSTS

Trusts, **22:9**

PHYSICAL ACT

Revocation, **9:5**

POSTHUMOUS HEIRS

Intestacy, **16:13**

POWERS OF APPOINTMENT

Generally, **21:1 to 21:22, 23A:1 to
23A:7**

Adverse party consent, **21:7**

Amending, **21:8, 21:15, 23A:4**

Appointive property

creditors rights, **21:22, 23A:7**

disclaiming, **21:21**

Authority to revoke or amend, **21:15**

Blanket exercise clauses, **21:11**

Choice of law, **21:3, 23A:3**

Consent, adverse party, **21:7**

Contracts to exercise or not exercise,
21:18, 23A:6

Creation, **21:4, 23A:4**

Definitions, **21:2, 23A:2**

Disclaiming, **21:19, 21:20, 23A:6**

Donor-imposed requirements, **21:12**

Failure to exercise

general power, **21:16**

nongeneral power, **21:17**

General requirements, **21:9**

Ineffective exercise of power, **21:12**

Non-transferability, **21:5**

Presently exercisable powers,

presumption, **21:6**

Presumption, general presently

exercisable powers, **21:6**

Releasing, **21:19, 21:20, 23A:6**

Residuary clauses, **21:10**

Revocation, **21:8, 21:15, 23A:4**

**PRETERMITTED HEIR
PROTECTION**

Generally, **15:6**

PROBATE

Holographic wills, **4:9**

Nuncupative wills, **5:9**

PROTECTIVE TRUSTS

Generally, **23B:7, 26:7**

REGISTERING

Renunciation, **16A:6, 19:6**

INDEX

REIMBURSEMENT

Office of trustee, **28:12**

RELIANCE

Durable powers of attorney, **20:13**

REMEDIES

Durable powers of attorney, breach,
20:11

RENUNCIATION

Generally, **16A:1 to 16A:9, 19:1 to 19:9**
Bar of right to renounce, **16A:9**
Construction of wills, **8:10**
Delivery, **16A:7, 19:7**
Effect, **16A:8, 19:8**
Fiduciaries, **16A:5, 19:5**
Filing, **16A:6, 19:6**
Registering, **16A:6, 19:6**
Waiver, **16A:9, 19:9**
What may be renounced, **16A:4, 19:4**
Who may renounce, **16A:3, 19:3**

REPUBLICATION

Codicil, **7:2**

RESIDUARY CLAUSES

Powers of appointment, **21:10**

RESIGNATION

Agent, durable powers of attorney,
20:12

RESULTING TRUSTS

Trusts, **22:6**

REVERSIONS

Misconduct, loss of property rights,
18:7

REVOCABLE TRUSTS

Generally, **27:1 to 27:7**
Amendment, **27:3**
Capacity, **27:2**
Contested validity, **27:5**
Distribution, trust Res, **27:5**
Divorce, lapse, **27:6**
Lapse by divorce, **27:6**
Modification, **27:7**
Revocation, **27:3, 27:6**
Settlor's control, **27:4**

REVOCABLE TRUSTS—Cont'd

Termination, **27:7**

REVOCATION

Generally, **9:1 to 9:20**
Dependent relative revocation
generally, **9:14 to 9:16**
physical act to instrument under
mistake, **9:15**
subsequent instrument under
mistake, **9:16**
Destroyed wills, **9:7**
Fraud, **9:8**
Holographic wills, **4:8**
Lost wills, **9:7**
Misconduct, loss of property rights,
18:10
Mutual wills, **9:13**
Nuncupative wills, **5:11**
Operation of law
generally, **9:9 to 9:12**
after-born, after-adopted, and after-
entitled children, **9:10**
alienation, **9:12**
divorce, **9:11**
marriage, **9:9**
Physical act, **9:5**
evidence, **9:6**
Powers of appointment, **21:8**
Revival
generally, **9:17 to 9:20**
date of revival, **9:18**
intent of testator, **9:19**
revocation of later will, **9:19**
Revocable trusts, **27:3**
Subsequent writing, **9:4**
Trusts, **22:3**
Undue influence, **9:8**

SAFE-KEEPING

Holographic wills, **4:6**
Wills, **3:15**

SECRET TRUSTS

Grounds for contest, **13:2**

SELF-PROVED WILLS

Attested written wills, **3:9**

SIGNATURES

- Holographic wills, testator, **4:5**
- Testator, **3:2 to 3:4**
 - holographic wills, **4:5**
- Witnesses
 - presence of each other, **3:13**
 - presence of testator, **3:12**
 - testator's request, **3:14**

SIMULTANEOUS DEATH ACT

- Generally, **11A:1 to 11A:3**

SPENDTHRIFT TRUSTS

- Generally, **23B:2, 26:2**

SPOUSAL RIGHTS

- Misconduct, loss of property rights, **18:2**

STATUTE OF DISTRIBUTION

- Intestacy, **16:3**

STATUTORY FORMS

- Durable powers of attorney, **20:15**

SUCCESSOR TRUSTEE

- Appointment, **28:5**

SURVIVAL REQUIREMENT

- 120-hour, **17:6, 17:8**

SURVIVING SPOUSES

- Election, **8:12**
- Intestacy, order of succession, **16:6**
- Right to elective share
 - generally, **14:1 to 14:4**

**SURVIVORSHIP AND
SIMULTANEOUS DEATH**

- 120-hour period, **17:6, 17:8**
- Generally, **17:1 to 17:9**
- Definitions, **17:3**
- Gratuitous transfers, application to all, **17:5**
- Key feature, **17:4**
- Proof of death, **17:9**
- Status, **17:9**
- Victim, surviving slayer, **17:7**

SURVIVORSHIP PROPERTY

- Misconduct, loss of property, **18:6**

TERMINATION

- Durable powers of attorney, **20:7**
- Revocable trusts, **27:7**

TESTAMENTARY ADDITIONS

- Trusts, **7:5**

TESTAMENTARY CAPACITY

- Generally, **10:1 to 10:8**
- Delirium, **10:6**
- Drug usage, **10:6**
- Drunkenness, **10:6**
- Eccentricity, **10:7**
- Insane delusions, **10:5**
- Insanity, **10:4**
- Lack of capacity, **10:3**
- Old age, **10:7**
- Proving mental capacity, **10:8**

TESTAMENTARY INTENT

- Attested written wills, **3:5**
- Holographic wills, **4:7**

TESTATORS

- Handwriting, holographic wills, **4:4**
- Nuncupative will, intention, **5:4**
- Request for witness signature, **3:14**
- Signatures, **3:2 to 3:4**
 - holographic wills, **4:7**
- Witness signing in presence of, **3:12**

TRUSTEE

- Modification or termination of trust, **25:5**
- Office
 - generally, **28:1 to 28:12**
 - acceptance, **28:2**
 - compensation, **28:11**
 - cotrustees, **28:4**
 - court power, appoint additional trustee or fiduciary, **28:6**
 - declining, **28:2**
 - delivery of property, former trustee, **28:10**
 - reimbursement, **28:12**
 - removal, **28:8**
 - resignation, **28:8**
 - successor trustee
 - appointment, **28:5**
 - legal consequences, **28:7**

INDEX

TRUSTEE—Cont'd

- Office—Cont'd
 - trustee's bond, **28:3**
- Trustee's bond, **28:3**

TRUSTEE'S BOND

- Office of trustee, **28:3**

TRUSTS

- Generally, **22:1 to 22:12**
- Active trusts, **22:9**
- Animals, **24:6**
- Charitable trusts, **22:11, 24:4**
- Constructive trusts, **22:5**
- Creation, **22:3**
- Custodial trusts, **22:10**
- Decanting, **24:8**
- Definite beneficiary requirement, **24:3**
- Definition, **22:2**
- Express trusts, **22:5**
- Implied trusts, **22:5**
- Life estate, advantages, **22:4**
- Methods for creating a valid trust, **24:1**
- Nature, **22:2**
- Noncharitable trusts, without ascertainable beneficiaries, **24:7**
- North Carolina Uniform Trust Code (NCUTC), **22:12**
- North Carolina's "peculiar rule," will devises, **22:2**
- Oral trusts, **24:5**
- Parol trusts, **22:5**
- Passive trusts, **22:9**
- Relationships distinguished, **22:3**
- Requirements, **24:2**
- Revocability, **22:3**
- Testamentary additions, **7:5**

UNDUE INFLUENCE

- Grounds for contest
 - generally, **11:1 to 1:5**
 - confidential relations, **11:5**
 - evidence, **11:2, 11:4**
 - hearsay, **11:3**
 - inequalities as evidence, **11:4**
 - injustice as evidence, **11:4**
 - presumptions, **11:5**
- Revocation, **9:8**

UNIFORM SIMULTANEOUS DEATH ACT

- Misconduct, loss of property rights, **18:14**

VESTED REMAINDERS

- Misconduct, loss of property rights, **18:7**

VICTIM

- Surviving slayer, survivorship and simultaneous death, **17:7**

WAIVER

- Renunciation, **16A:9, 19:9**

WITNESSES

- Competency, attested written wills, **3:10**
- Interest affecting competency, **3:11**
- Nuncupative wills, **5:7**
- Signatures
 - presence of each other, **3:13**
 - presence of testator, **3:12**
 - testator's request for, **3:14**

WRITING

- Revocation, **9:4**

YEAR'S ALLOWANCE

- Generally, **15:1 to 15:6**
- Procedure, **15:3, 15:4**