

# **Table of Contents**

## **SECTION 1. WILLS: HISTORY, GENERAL PRINCIPLES, FORMALITIES, AND CONTRACTS REGARDING**

### **CHAPTER 1. INTRODUCTION**

- § 1:1 History of wills and jurisdiction over matters of probate, etc.
- § 1:2 Freedom of testation (a brief introduction)

### **CHAPTER 2. WILLS-SOME GENERAL PRINCIPLES**

- § 2:1 Definition of will
- § 2:2 Kinds of wills
- § 2:3 Character of wills
- § 2:4 Forms of wills
- § 2:5 Wills and gifts causa mortis distinguished
- § 2:6 Codicils
- § 2:7 Definitions
- § 2:8 Attorney's duty to correct mistakes

### **CHAPTER 3. ATTESTED WRITTEN WILLS**

- § 3:1 Introduction
- § 3:2 Signature of testator
- § 3:3 Must the testator sign first?
- § 3:4 Acknowledgment of signature by testator
- § 3:5 Testamentary intent
- § 3:6 Attestation of a written will
- § 3:7 Purpose of attestation and subscription
- § 3:8 Attestation clause
- § 3:9 Self-Proved wills
- § 3:10 Competency of witnesses to wills
- § 3:11 Interest as affecting competency
- § 3:12 Signatures of witnesses—In presence of testator

- § 3:13 Witnesses signing in presence of each other
- § 3:14 Testator's request of witnesses to sign
- § 3:15 Safe-Keeping of wills

## **CHAPTER 4. HOLOGRAPHIC WILLS**

- § 4:1 Definition of holographic will
- § 4:2 A brief history of holographic wills
- § 4:3 Requirements for a valid holographic will
- § 4:4 "Written Entirely in the Handwriting of the Testator" requirement
- § 4:5 Signature of the testator
- § 4:6 Safe-Keeping requirement
- § 4:7 Testamentary intent and holographic wills
- § 4:8 Revocation of a holographic will
- § 4:9 Probate of a holographic will

## **CHAPTER 5. NUNCUPATIVE WILLS (INCLUDING WILLS FOR MILITARY PERSONNEL)**

- § 5:1 Definition
- § 5:2 History
- § 5:3 Requisites to validity of nuncupative will
- § 5:4 Intention of testator to make nuncupative will
- § 5:5 Nuncupative will must be reduced to writing
- § 5:6 In the testator's last illness
- § 5:7 Witnesses to nuncupative will
- § 5:8 Form of nuncupative will
- § 5:9 Probate of nuncupative will
- § 5:10 Codicil to nuncupative will
- § 5:11 Revocation of nuncupative will
- § 5:12 Characteristics of nuncupative will in north carolina
- § 5:13 Military personnel wills

## **CHAPTER 6. JOINT WILLS, MUTUAL WILLS AND CONTRACTS TO MAKE WILLS**

- § 6:1 Joint wills
- § 6:2 Mutual wills
- § 6:3 Contracts to make a will

TABLE OF CONTENTS

## **SECTION 2. WILLS: COMPONENTS, CONSTRUCTION, AND REVOCATION**

### **CHAPTER 7. COMPONENTS OF A WILL: INTEGRATION; REPUBLICATION BY CODICIL; INCORPORATION BY REFERENCE; ACTS OF INDEPENDENT SIGNIFICANCE; TESTAMENTARY ADDITIONS TO TRUSTS; AND OTHER MATTERS**

- § 7:1 Integration
- § 7:2 Republication by codicil
- § 7:3 Incorporation by reference
- § 7:4 Acts of independent significance
- § 7:5 Testamentary additions to trusts
- § 7:6 Other matters

### **CHAPTER 8. CONSTRUCTION OF WILLS**

- § 8:1 Devisees
- § 8:2 Description
- § 8:3 Property subject to testamentary disposition
- § 8:4 Kinds of devises
- § 8:5 Abatement and exoneration
- § 8:6 Charge on devises
- § 8:7 Ademption by extinction
- § 8:8 Ademption by satisfaction
- § 8:9 Devises—Income and accretions
- § 8:10 Renunciation
- § 8:11 Election
- § 8:12 —Surviving spouse
- § 8:13 Lapsed and void devises
- § 8:14 Class gifts
- § 8:15 Gifts to creditors
- § 8:16 Transfer or release of expectancy
- § 8:17 Assent of personal representative—Personalty
- § 8:18 —Realty
- § 8:19 Change from realty to personalty or vice versa
- § 8:20 Distribution

## **CHAPTER 9. REVOCATION OF WILLS (INCLUDING DEPENDENT RELATIVE REVOCATION AND REVIVAL OF REVOKED WILLS)**

- § 9:1 A brief history
- § 9:2 Revocation today—In general
- § 9:3 Revocation of written wills—Introduction
- § 9:4 —By subsequent writing
- § 9:5 —By physical Act
- § 9:6 Revocation by physical Act—Evidence
- § 9:7 Lost or destroyed wills
- § 9:8 Undue influence and fraud causing or preventing a revocation
- § 9:9 Revocation by operation of law—Marriage
- § 9:10 —After-Born, after-Adopted & after-Entitled children
- § 9:11 —Divorce
- § 9:12 —Alienation
- § 9:13 Revocation of mutual wills
- § 9:14 Dependent relative revocation
- § 9:15 —By physical Act to the instrument under a mistake
- § 9:16 —By subsequent instrument under mistake
- § 9:17 Revival of revoked wills
- § 9:18 Revived will speaks as of date of revival
- § 9:19 Revival and intent of the testator issues
- § 9:20 Revival by revocation of later will

## **SECTION 3. WILLS: GROUNDS FOR CONTEST**

## **CHAPTER 10. LACK OF TESTAMENTARY CAPACITY**

- § 10:1 Introduction
- § 10:2 Who may make a will?
- § 10:3 Lack of testamentary capacity
- § 10:4 Insanity
- § 10:5 Insane delusions
- § 10:6 Delirium, drunkenness, and drug usage
- § 10:7 Eccentricity and old age
- § 10:8 Proving mental capacity

TABLE OF CONTENTS

**CHAPTER 11. GROUNDS FOR CONTEST-  
UNDUE INFLUENCE**

- § 11:1 Undue influence—In general
- § 11:2 Undue Influence—Evidence
- § 11:3 Undue influence—Hearsay
- § 11:4 —Inequalities or injustice as evidence
- § 11:5 —Confidential relations and presumptions of undue influence

**CHAPTER 12. GROUNDS FOR CONTEST-  
FRAUD**

- § 12:1 Fraud—An introduction
- § 12:2 Fraud in the inducement
- § 12:3 Fraud in the execution
- § 12:4 Remedies for fraud

**CHAPTER 13. GROUNDS FOR CONTEST-  
MISTAKE AND SECRET TRUSTS**

- § 13:1 Mistake
- § 13:2 Mistake-identity of the instrument
- § 13:3 Mistake—Legal effect
- § 13:4 Mistake—Contents
- § 13:5 North Carolina Law of Mistake
- § 13:6 Secret trusts

**SECTION 4. SPOUSAL AND FAMILY  
PROTECTIONS**

**CHAPTER 14. SURVIVING SPOUSE'S  
RIGHT TO AN ELECTIVE SHARE**

- § 14:1 Elective Share—Introduction
- § 14:2 History of north carolina law of elective share statutes—Prior to July 1, 1960
- § 14:3 —Subsequent to July 1, 1960 and prior to January 1, 2001
- § 14:4 Current north carolina elective share statute—Effective January 1, 2001

## **CHAPTER 15. ADDITIONAL PROTECTIONS FOR SPOUSE AND DEPENDENTS-YEAR'S ALLOWANCE, ELECTIVE LIFE ESTATE, AND PRETERMITTED HEIRS**

- § 15:1 Year's allowance
- § 15:2 Who is entitled to year's allowance?
- § 15:3 Procedure for having the year's allowance paid when assigned by magistrate or clerk of court
- § 15:4 Procedure for having the year's allowance paid when assigned in superior court
- § 15:5 The elective life estate under N.C. Gen. Stat. § 29-30
- § 15:6 Pretermitted heir protection

## **SECTION 5. INTESTACY**

### **CHAPTER 16. INTESTACY**

- § 16:1 History
- § 16:2 Partial intestacy
- § 16:3 Statute of distribution and canons of descent repealed
- § 16:4 Ancestral property
- § 16:5 Inheritance by Half-Blood
- § 16:6 Order of succession—Rights of surviving spouse
  - Shares of other persons
- § 16:7 Adopted child
- § 16:8 Inheritance by illegitimates
- § 16:10 Inheritance by legitimated children
- § 16:11 Artificial insemination and in vitro fertilization
- § 16:12 Inheritance by aliens
- § 16:13 Posthumous heirs
- § 16:14 Distribution of property among classes
- § 16:15 Degrees of relationship
- § 16:16 Advancements
- § 16:17 Escheat

## **SECTION 6. MISCELLANEOUS**

### **CHAPTER 17. SURVIVORSHIP AND SIMULTANEOUS DEATH IN NORTH CAROLINA**

- § 17:1 Introduction

## TABLE OF CONTENTS

- § 17:2 Summary of north carolina's simultaneous death Act
- § 17:3 Definitions
- § 17:4 The key feature
- § 17:5 Application to all gratuitous transfers
- § 17:6 120-Hour period not applicable to survival of an event
- § 17:7 Victim deemed to survive a slayer
- § 17:8 Exceptions to the 120-hour survival requirement
- § 17:9 Proof of death or status

## CHAPTER 18. LOSS OF PROPERTY RIGHTS FOR MISCONDUCT

- § 18:1 Introduction
- § 18:2 Spousal rights
- § 18:3 Parental rights
- § 18:4 Killing of the decedent
- § 18:5 Estates by entirety
- § 18:6 Survivorship property
- § 18:7 Reversions and vested remainders
- § 18:8 Contingent remainders and executory interests
- § 18:9 Divesting of interests in property
- § 18:10 Powers of appointment and revocation
- § 18:11 Insurance benefits
- § 18:12 Persons acquiring from slayer protected
- § 18:13 Record determining slayer
- § 18:14 Uniform simultaneous death Act not applicable
- § 18:15 Construction

## CHAPTER 19. RENUNCIATION

- § 19:1 History of renunciation
- § 19:2 Current law—Introduction
- § 19:3 Who may renounce?
- § 19:4 What may be renounced
- § 19:5 Fiduciaries and renunciations—Some special rules
- § 19:6 Requirement for filing and registering renunciations
- § 19:7 Delivery of the instrument of renunciation and related definitions
- § 19:8 Effect of a renunciation
- § 19:9 Waiver and bar to one's right to renounce

## CHAPTER 20. DURABLE POWERS OF ATTORNEY

- § 20:1 Introduction

- § 20:2 Durability
- § 20:3 Execution
- § 20:4 Validity within the state of north carolina
- § 20:5 Guardian nomination
- § 20:6 When a power of attorney is effective
- § 20:7 Termination
- § 20:8 Agents
- § 20:9 Agent's duties
- § 20:10 Procedures for adjudicating power of attorney disputes
- § 20:11 Remedies for breach of duties
- § 20:12 Resignation of agent
- § 20:13 Acceptance and reliance upon power of attorney
- § 20:14 Grants of authority and exercise of authority
- § 20:15 Statutory forms

## CHAPTER 21. POWERS OF APPOINTMENT

- § 21:1 Introduction
- § 21:2 Key definitions
- § 21:3 Choice of law and powers of appointment
- § 21:4 Creation of a power of appointment
- § 21:5 Non-Transferability of Powers
- § 21:6 Presumption in favor of general, presently exercisable powers
- § 21:7 Powers exercisable only with the consent of adverse party
- § 21:8 Revoking or amending a power of appointment
- § 21:9 General requirements for the exercise of a power of appointment
- § 21:10 Exercise of powers by residuary clauses
- § 21:11 Exercise by blanket-exercise clauses
- § 21:12 Donor-Imposed requirements
- § 21:13 Ineffective exercise of a power
- § 21:14 Consequences of ineffective appointments
- § 21:15 Power holder's authority to revoke or amend the exercise of a power
- § 21:16 Failure to exercise a general power of appointment
- § 21:17 Failure to exercise a nongeneral power of appointment
- § 21:18 Contracts to exercise or not exercise a power of appointment
- § 21:19 Disclaiming/releasing the power of appointment
- § 21:20 The consequences of the release of a power

## TABLE OF CONTENTS

- § 21:21 Disclaiming appointive property
- § 21:22 Creditors rights in appointive property

## SECTION 7. TRUSTS

### CHAPTER 22. AN INTRODUCTION TO THE LAW OF TRUSTS

- § 22:1 Generally
- § 22:2 Definition and nature of trusts
- § 22:3 Creation requirements for trusts; revocability of trusts; and other relationships distinguished
- § 22:4 Advantages of a trust over a legal life estate
- § 22:5 Express trusts distinguished from implied trusts such as resulting trusts or constructive trusts; parol trusts
- § 22:6 Resulting trusts
- § 22:7 Constructive trusts (actually a misnomer)
- § 22:8 North Carolina's "Peculiar" rule re will devises, intestacy and constructive trusts
- § 22:9 Active and passive trusts
- § 22:10 Custodial trusts
- § 22:11 Charitable trusts
- § 22:12 A Brief Outline of the North Carolina Uniform Trust Code (NCUTC)

### CHAPTER 23. GENERAL PROVISIONS OF THE NORTH CAROLINA UNIFORM TRUST CODE (NCUTC)

- § 23:1 Introduction to the NCUTC
- § 23:2 Definitions
- § 23:3 Knowledge
- § 23:4 Default and mandatory rules under the NCUTC
- § 23:5 The NCUTC and the common law
- § 23:6 Applicable law
- § 23:7 Where a trust is administered
- § 23:8 Notice requirements in general
- § 23:9 Nonjudicial settlements
- § 23:10 Rules of construction applicable to wills also applicable to trusts
- § 23:11 Judicial proceedings under the NCUTC

## **CHAPTER 24. THE CREATION AND VALIDITY OF TRUSTS (ARTICLE 4 OF NCUTC), INCLUDING DECANTING (ARTICLE 8B NCUTC)**

- § 24:1 Methods for creating a valid trust in north carolina
- § 24:2 Requirements for creating a trust in general
- § 24:3 The definite beneficiary requirement
- § 24:4 Charitable trusts
- § 24:5 Oral trusts
- § 24:6 Trusts for animals
- § 24:7 Noncharitable trusts without ascertainable beneficiaries
- § 24:8 Decanting—A Fiduciary’s Power to Appoint Trust Property to a Second Trust

## **CHAPTER 25. MODIFICATION, TERMINATION, REFORMATION, CY PRES, CONSOLIDATION AND DIVISION OF TRUSTS UNDER ARTICLE 4 (NCUTC)**

- § 25:1 Introduction
- § 25:2 Modification or termination—In general
- § 25:3 Modification or termination of trusts by beneficiaries
- § 25:4 Modification or termination by court order
- § 25:5 Modification or termination by trustee
- § 25:6 Cy Pres (Modification or Termination of a Charitable Trust)

## **CHAPTER 26. CLAIMS BY CREDITORS, SPENDTHRIFT TRUSTS, DISCRETIONARY TRUSTS, SETTLOR’S CREDITORS, OVERDUE DISTRIBUTIONS, TRUSTEE OBLIGATIONS, AND PROTECTIVE TRUSTS**

- § 26:1 Claims by creditors of a beneficiary in general
- § 26:2 Spendthrift trusts
- § 26:3 Discretionary trusts
- § 26:4 Overdue mandatory distributions and creditors’ rights
- § 26:5 Creditors’ claim against the settlor
- § 26:6 Creditors’ rights against the trustee
- § 26:7 Protective trusts

## TABLE OF CONTENTS

### **CHAPTER 27. REVOCABLE TRUSTS (ARTICLE 6 OF NCUTC)**

- § 27:1 Introduction
- § 27:2 Capacity required to create a revocable inter vivos trust (a/k/a Living Trust)
- § 27:3 Revocation or amendment of a revocable trust
- § 27:4 Settlor's control of a revocable trust
- § 27:5 Actions contesting the validity of a revocable trust and distribution of trust Res
- § 27:6 Lapse and revocation of revocable trust by divorce
- § 27:7 Modification or termination of revocable trust

### **CHAPTER 28. THE OFFICE OF TRUSTEE**

- § 28:1 Introduction
- § 28:2 Accepting or declining the office of trustee
- § 28:3 Trustee's bond
- § 28:4 Cotrustees
- § 28:5 Appointment of a successor trustee necessary because of vacancy in trusteeship
- § 28:6 Power vested in court to appoint additional trustee or special fiduciary
- § 28:7 Legal consequences of becoming successor trustee
- § 28:8 Resignation of trustee
- § 28:9 Removal of trustee
- § 28:10 Delivery of property by former trustee
- § 28:11 Compensation of trustee
- § 28:12 Reimbursement of trustee for expenses

### **APPENDIX**

Appendix A. Statutes

**Table of Laws and Rules**

**Table of Cases**

**Index**