Law of Intestate Succession

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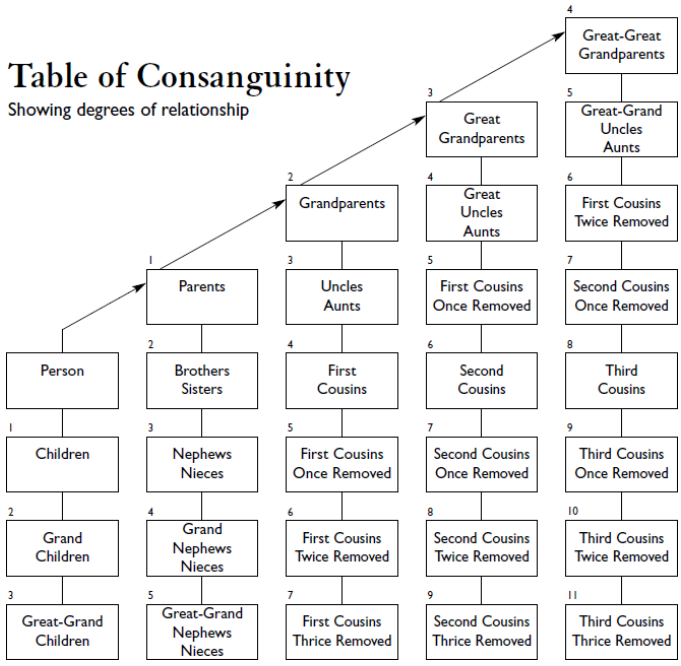
Who Can Inherit – Degrees of Kinship and Order of Inheritance

If a decedent dies without a Will, or has property not disposed of in the Will, then we have to look at the laws of intestacy to determine who will received distributions from the Estate. After the payment of the year's allowance, costs of administration, payment of lawful debts and claims, and payment of taxes, we can calculate the net estate.

The net estate is distributed to the heirs as determined by the laws of intestacy. The order of priority among the heirs is: Surviving Spouse, Lineal Descendants, Parents, Siblings, and their Lineal Descendants, Grandparents. The following table of consanguinity makes the relationships a little easier to visualize.



Determining the Share Size

Once you determine the share of the surviving spouse and deduct that amount, you will want to use N.C. Gen. Stat. 29-16 to determine the share of the remaining heirs. The way to calculate this would be to find the nearest generation with individuals either surviving the decedent or predeceasing the decedent but having surviving lineal descendants. You will determine the shares between everyone in that generation but only actually pay out the shares indicated for those that survived the decedent. For those that predeceased but had living lineal descendants, you will gather their remaining shares and then move to their lineal descendants and split what remains between all the living descendants and predeceasing descendants who have living lineal descendants. You will essentially repeat this process going down the line of lineal descendants until you have allocated all shares of net estate.

To determine the share of the surviving spouse, you will want to look at 29-14:

§ 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) 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 sixty thousand dollars ($60,000) in value, all of the personal property; if the net personal property exceeds sixty thousand dollars ($60,000) in value, the sum of sixty thousand dollars ($60,000) 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 sixty thousand dollars ($60,000) in value, all of the personal property; if the net personal property exceeds sixty thousand dollars ($60,000) in value, the sum of sixty thousand dollars ($60,000) 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 one hundred thousand dollars ($100,000) in value, all of the personal property; if the net personal property exceeds one hundred thousand dollars ($100,000) in value, the sum of one hundred thousand dollars ($100,000) 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; 2012-71, s. 1.)

For those other than the spouse, you will want to look to 29-15 and 29-16 to determine shares:

§ 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.)

§ 29-16. Distribution among classes.

(a) Children and Their Lineal Descendants. - If the intestate is survived by lineal descendants, their respective shares in the property which they are entitled to take under G.S. 29-15 of this Chapter shall be determined in the following manner:

(1) Children. - To determine the share of each surviving child, divide the property by the number of surviving children plus the number of deceased children who have left lineal descendants surviving the intestate.

(2) Grandchildren. - To determine the share of each surviving grandchild by a deceased child of the intestate in the property not taken under the preceding subdivision of this subsection, divide that property by the number of such surviving grandchildren plus the number of deceased grandchildren who have left lineal descendants surviving the intestate.

(3) Great-Grandchildren. - To determine the share of each surviving great-grandchild by a deceased grandchild of the intestate in the property not taken under the preceding subdivisions of this subsection, divide that property by the number of such surviving great-grandchildren plus the number of deceased great-grandchildren who have left lineal descendants surviving the intestate.

(4) Great-Great-Grandchildren. - To determine the share of each surviving great-great-grandchild by a deceased great-grandchild of the intestate in the property not taken under the preceding subdivisions of this subsection, divide that property by the number of such surviving great-great-grandchildren plus the number of deceased great-great-grandchildren who have left lineal descendants surviving the intestate.

(5) Other Lineal Descendants of Children. - Divide, according to the formula established in the preceding subdivisions of this subsection, any property not taken under such preceding subdivisions, among the lineal descendants of the children of the intestate not already participating.

(b) Brothers and Sisters and Their Lineal Descendants. - If the intestate is survived by brothers and sisters or the lineal descendants of deceased brothers and sisters, their respective shares in the property which they are entitled to take under G.S. 29-15 of this Chapter shall be determined in the following manner:

(1) Brothers and Sisters. - To determine the share of each surviving brother and sister, divide the property by the number of surviving brothers and sisters plus the number of deceased brothers and sisters who have left lineal descendants surviving the intestate within the fifth degree of kinship to the intestate.

(2) Nephews and Nieces. - To determine the share of each surviving nephew or niece by a deceased brother or sister of the intestate in the property not taken under the preceding subdivision of this subsection, divide that property by the number of such surviving nephews or nieces plus the number of deceased nephews and nieces who have left lineal descendants surviving the intestate within the fifth degree of kinship to the intestate.

(3) Grandnephews and Grandnieces. - To determine the share of each surviving grandnephew or grandniece by a deceased nephew or niece of the intestate in the property not taken under the preceding subdivisions of this subsection, divide that property by the number of such surviving grandnephews and grandnieces plus the number of deceased grandnephews and grandnieces who have left children surviving the intestate.

(4) Great-Grandnephews and Great-Grandnieces. - To determine the share of each surviving child of a deceased grandnephew or grandniece of the intestate, divide equally among the great-grandnephews and great-grandnieces of the intestate any property not taken under the preceding subdivisions of this subsection.
(5) Grandparents and Others. - If there is no one within the fifth degree of kinship to the intestate entitled to take the property under the preceding subdivisions of this subsection, then the intestate's property shall go to those entitled to take under G.S. 29-15(5).
(c) Uncles and Aunts and Their Lineal Descendants. - If the intestate is survived by uncles and aunts or the lineal descendants of deceased uncles and aunts, their respective shares in the property which they are entitled to take under G.S. 29-15 shall be determined in the following manner:
(1) Uncles and Aunts. - To determine the share of each surviving uncle and aunt, divide the property by the number of surviving uncles and aunts plus the number of deceased uncles and aunts who have left children or grandchildren surviving the intestate.
(2) Children of Uncles and Aunts. - To determine the share of each surviving child of a deceased uncle or aunt of the intestate in the property not taken under the preceding subdivision of this subsection, divide that property by the number of surviving children of deceased uncles and aunts plus the number of deceased children of deceased uncles and aunts who have left children surviving the intestate.
(3) Grandchildren of Uncles and Aunts. - To determine the share of each surviving child of a deceased child of a deceased uncle or aunt of the intestate, divide equally among the grandchildren of uncles or aunts of the intestate any property not taken under the preceding subdivisions of this subsection.

Elective Share and Life Estate

Surviving spouses may decide to take an elective share in lieu of what they were given in the Will, which is governed by Article 1A of Ch 30. In 2013, the elective share calculation was changed. It now accounts for the length of time the spouse was married to the decedent:

§ 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.

In lieu of the intestate share or of the elective share, the spouse may be allowed a life estate in one third in value of all the real estate. Alternately, the spouse may elect to take a life estate in the usual dwelling house, together with outbuildings, improvements, easements, and lands upon which situated and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership of the household furnishings therein. If the value of this life estate does not equal one-third of the value of the life estate in all the real property, the spouse can claim additional life estate rights in other property to get to that value. Article 8 of Chapter 29 of the N.C. Gen. Statutes governs this process.

Bars to Inheritance

Bars to inheritance are governed by Chapter 31A of the N.C. Gen. Statutes. It really covers a handful of situations: acts barring rights of spouses, acts barring rights of parents, and acts barring rights of Slayers.

Illegitimacy

Legitimate children inherit via intestate succession. G.S. 29-18. A legitimate child is one who has been born of married parents.

A legitimated child is one who is treated as if born in wedlock (which has a variety of applications, including status as an heir intestate succession) by virtue of one of two methods:

a. either a special proceeding filed by the *father* of a child born out of wedlock for a declaration of the child as legitimate. G.S. 49-10; or
b. marriage of the mother of a child to the "reputed father of such child" after the birth of the child. G.S. 49-12.

An illegitimate child is treated as a legitimate child for the purpose of the intestate succession of that child's *mother*. G.S. 29-19(a).

An illegitimate child cannot inherit from his father via intestate succession unless:

a. the father was adjudged to be the father of the child by way of:
    i. prosecution of the father for child support and establishment of paternity therein; G.S. 29-19(b)(1); G.S. 49-4, 5, 7;
    ii. acknowledgement of paternity of the child by the father by way of payment of child support within three years of birth; G.S. 29-19(b)(1); G.S. 49-4(3);
    iii. civil action to establish paternity; G.S. 29-19(b)(1); G.S. 49-14 – 49-16;
b. the father acknowledges during his own lifetime and the child's lifetime that he is the father of such child by way of "a written instrument executed or acknowledged before a certifying officer named in G.S. 52-10(b)[1] and filed during his own lifetime and the child's lifetime in the office of the clerk of superior court of the county where either he or

[1] G.S. 52-10(b) identifies such officer as "a notary public, or a justice, judge, magistrate, clerk, assistant clerk or deputy clerk of the General Court of Justice, or the equivalent or corresponding officers of the state, territory or foreign country where the acknowledgment is made [. . . s]uch officer must not be a party to the contract."

the child resides." (A voluntary child support agreement filed with the clerk of superior court works. *In re Estate of Potts*, 186 N.C. App. 460, 651 S.E.2d 297 (2007)).

c. The father acknowledges that he is the father of an illegitimate child in his duly probated last will, unless there is express provision to the contrary.

Except for acknowledgement in a duly probated last will, an illegitimate child shall not be "entitled to take hereunder unless the person has given written notice of the basis of the person's claim to the personal representative of the putative father within six months after the date of the first publication or posting of the general notice to creditors." G.S. 29-19(2).

Unless one of the above conditions is met from G.S. 29-19(b) or (c),[2] an illegitimate child will not be able to inherit, even with:

a. A BIRTH CERTIFICATE
    i. Birth Certification Amendment Application Form did not meet conditions of G.S. 29-19(b) where it contained no statement by the putative father or anyone else that he was the father of the child, and his signature in the blank space involved, even if it could be construed to be an unambiguous acknowledgment of paternity, was not sworn to before any official authorized to administer oaths. *In re Will of Bunch*, 86 N.C. App. 463, 358 S.E.2d 118 (1987).
    ii. A Birth Certificate listing decedent as father, without indication of marriage between father and mother, serves as evidence of illegitimacy and nothing more. *See In re Williams*, 208 N.C. App. 148, 701 S.E.2d 399 (N.C. App. 2010).

b. ACKNOWLEDGMENT NOT FILED - Where a petitioner acknowledged his paternity before a notary public and executed a "Affidavit Of Parentage For Child Born Out Of Wedlock" but never filed the acknowledgment with the clerk of court, he did not fulfill all the requirements under G.S. 29-19(b). *In re Estate of Morris*, 123 N.C. App. 264, 472 S.E.2d 786 (1996); In re Williams, 701 S.E.2d 399 (N.C. App. 2010) *In re Williams*, 208 N.C. App. 148, 701 S.E.2d 399 (N.C. App. 2010).
c. A DNA TEST ESTABLISHING BIO. FATHER - *Phillips v. Ledford*, 162 N.C. App. 150, 590 S.E.2d 280 (2004), cert. denied, appeal dismissed, 358 N.C. 377, 597 S.E.2d 133 (2004).

This distinction between mother and father in terms of inheritance therefrom does not violate the equal protection or due process clauses of the United States Constitution as the statutes *in pari materia* are substantially related to lawful State interests. They are intended to promote, and are not in violation of the equal protection and due process clauses. *Mitchell v. Freuler*, 297 N.C. 206, 254 S.E.2d 762 (1979); *Herndon v. Robinson*, 57 N.C. App. 318, 291 S.E.2d 305, appeal dismissed and cert. denied, 306 N.C. 557, 294 S.E.2d 223 (1982).

WORKS BOTH WAYS. A father who entitles a child to inherit from him, and that father's kin, will be able to inherit by, through and from the illegitimate child. G.S. 29-19(c); *In re Estate of Mangum*, -- N.C. App. --, 713 S.E.2d 18 (2011).

[2] *Hayes v. Dixon*, 83 N.C. App. 52, 348 S.E.2d 609 (1986), cert. denied and appeal dismissed, 319 N.C. 224, 353 S.E.2d 402, cert. denied, 484 U.S. 824, 108 S. Ct. 88, 98 L. Ed. 2d 50 (1987).

Slayers

A slayer is defined as:

a. A person who, by a court of competent jurisdiction, is convicted as a principal or accessory before the fact of the willful and unlawful killing of another person.

b. A person who has entered a plea of guilty in open court as a principal or accessory before the fact of the willful and unlawful killing of another person.

c. A person who, upon indictment or information as a principal or accessory before the fact of the willful and unlawful killing of another person, has tendered a plea of nolo contendere which was accepted by the court and judgment entered thereon.

d. A person who is found by a preponderance of the evidence in a civil action brought within two years after the death of the decedent to have willfully and unlawfully killed the decedent or procured the killing of the decedent. If a criminal proceeding is brought against the person to establish the person's guilt as a principal or accessory before the fact of the willful and unlawful killing of the decedent within two years after the death of the decedent, the civil action may be brought within 90 days after a final determination is made by a court of competent jurisdiction in that criminal proceeding or within the original two years after the death of the decedent, whichever is later. The burden of proof in the civil action is on the party seeking to establish that the killing was willful and unlawful for the purposes of this Article.

e. A juvenile who is adjudicated delinquent by reason of committing an act that, if committed by an adult, would make the adult a principal or accessory before the fact of the willful and unlawful killing of another person.

The term "slayer" does not include a person who is found not guilty by reason of insanity of being a principal or accessory before the fact of the willful and unlawful killing of another person.

N.C. Gen. Stat. 31A-3.

Slayers are barred from certain testate and intestate succession rights, pursuant to Article 3 of Ch. 31 A of the N.C. Gen. Statutes. Essentially, slayers are treated as having predeceased the decedent. If the slayer has issue who would receive if the slayer predeceased, those issue would take. If there are entireties property, half transfers to the decedent's estate, and half is held for the slayer's life, which will be transferred at death to the victim's heirs or devisees. For other survivorship property, a similar rule applies, except that the slayer's share goes to the estate rather than the heirs or devisees directly. In practice, this may require leaving an estate open for a long time or reopening an estate long after the decedent has passed to dispose of property that is newly acquired by the slain decedent's estate upon the slayer's passing. Also of importance is that insurance and annuity proceeds won't go to the slayer either. The slayer will be treated as if he or she predeceased the decedent.

If before the rights of the slayer are adjudicated, a third party gives adequate consideration for some interest the slayer would have had but for the adjudication, then that person's rights are preserved, but the consideration paid will be held in trust and the slayer will be liable for any of the consideration he dissipated and for the difference in value.

Spouse

Acts barring the rights of spouses are governed by N.C. Gen. Stat. 31A-1. The most common one you may face is the subsequent divorce of a spouse, which also is addressed in 31-5.4 for decedent's dying with a Will.

§ 31A-1. Acts barring rights of spouse.

(a) The following persons shall lose the rights specified in subsection (b) of this section:

(1) A spouse from whom or by whom an absolute divorce or marriage annulment has been obtained or from whom a divorce from bed and board has been obtained; or

(2) A spouse who voluntarily separates from the other spouse and lives in adultery and such has not been condoned; or

(3) A spouse who wilfully and without just cause abandons and refuses to live with the other spouse and is not living with the other spouse at the time of such spouse's death; or

(4) A spouse who obtains a divorce the validity of which is not recognized under the laws of this State; or

(5) A spouse who knowingly contracts a bigamous marriage.

(b) The rights lost as specified in subsection (a) of this section shall be as follows:

(1) All rights of intestate succession in the estate of the other spouse;

(2) All right to claim or succeed to a homestead in the real property of the other spouse;

(3) All right to petition for an elective share of the estate of the other spouse and take either the elective intestate share provided or the life interest in lieu thereof;

(4) All right to any year's allowance in the personal property of the other spouse;

(5) All right to administer the estate of the other spouse; and

(6) Any rights or interests in the property of the other spouse which by a settlement before or after marriage were settled upon the offending spouse solely in consideration of the marriage.

(c) Any act specified in subsection (a) of this section may be pleaded in bar of any action or proceeding for the recovery of such rights, interests or estate as set forth in subsection (b) of this section.

(d) The spouse not at fault may sell and convey his or her real and personal property without the joinder of the other spouse, and thereby bar the other spouse of all right, title and interest therein in the following instances:

(1) During the continuance of a separation arising from a divorce from bed and board as specified in subsection (a)(1) of this section, or

(2) During the continuance of a separation arising from adultery as specified in subsection (a)(2) of this section, or during the continuance of a separation arising from an abandonment as specified in subsection (a)(3) of this section, or

(3) When a divorce is granted as specified in subsection (a)(4) of this section, or a bigamous marriage contracted as specified in subsection (a)(5) of this section.

§ 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.

Parents

§ 31A-2. Acts barring rights of parents.

Any parent who has wilfully abandoned the care and maintenance of his or her child shall lose all right to intestate succession in any part of the child's estate and all right to administer the estate of the child, except -

(1) Where the abandoning parent resumed its care and maintenance at least one year prior to the death of the child and continued the same until its death; or

(2) Where a parent has been deprived of the custody of his or her child under an order of a court of competent jurisdiction and the parent has substantially complied with all orders of the court requiring contribution to the support of the child.