



# SENATE BILL 218: Estates and Trusts Changes.

2023-2024 General Assembly

<b>Committee:</b>	<b>Date:</b>	December 5, 2023
<b>Introduced by:</b>	<b>Prepared by:</b>	Debbie Griffiths Staff Attorney
<b>Analysis of:</b>	S.L. 2023-120	

**OVERVIEW:** *Part I of S.L. 2023-120 makes changes related to the yearly allowance for a spouse and child of a decedent as follows:*

- *The procedure for requesting a year's allowance.*
- *Eliminating the use of magistrates.*
- *Funding the surviving spouse's yearly allowance is given priority over pro-rata funding shared with minor children.*
- *The children's yearly allowance is limited to children under 21, the amount is increased to ten thousand dollars (\$10,000), and the priority for who can receive the allowance on behalf of the child(ren) is to be reordered.*
- *Assets recovered by the personal representative for payment of claims of decedent's creditors or debts of the estate is used to pay the yearly allowance of a spouse and child prior to paying other claims.*

*Part II of S.L. 2023-120 amends G.S. 31-5.4 to change the treatment of a former spouse in estates by treating the former spouse as having predeceased the testator when the testator did not remove the former spouse from their will unless a contrary intent is expressly included in the will or through subsequent actions such as remarriage or execution of additional documents. G.S. 36C-6-606 is also amended to make technical and conforming changes to align with the proposed language of G.S. 31-5.4.*

*Sections 1.2 and 1.3 are effective March 1, 2024, and apply to decedents dying on or after that date. Sections 2.1 and 2.2 are effective March 1, 2024, and apply to wills probated on or after that date. Except as otherwise provided, S.L. 2023-120 is effective March 1, 2024.*

## CURRENT LAW AND BILL ANALYSIS:

### PART I. CHANGES TO YEARLY ALLOWANCE IN ESTATES

#### Section 1.2-Procedure for requesting yearly allowance.

Article 4 of Chapter 30 of the General Statutes addresses the yearly allowance for the surviving spouse and children of a decedent including:

- The surviving spouse's yearly allowance amount is \$60,000.00, is exempt from any lien against the estate, and is charged against the spouse's share of the estate when there is a will.
- The spouse must make a written request for the allowance from the personal representative within one year of the decedent's death. The spouse can apply to the clerk or magistrate if there is no

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# Senate Bill 218

Page 2

administration, if the personal representative fails to assign the year's allowance as statutorily provided for, or if the surviving spouse is the personal representative.

- A child's yearly allowance is \$5,000.00 and is paid to each child of the decedent if the child meets one of the following criteria:
  - The child is under the age of 18, including a child in utero at the time of death of the widow's husband.
  - The child is under 22 and is a full-time student.
  - The child is under 21 and has been declared mentally incompetent or is totally disabled.
  - Any person under 18 who resided with the deceased parent at the time of death to whom the deceased or surviving parent stood in loco parentis.
  - The child's yearly allowance is in addition to their share of the deceased parent's estate and is exempt from any lien against decedent's estate.
- The payment of the child's allowance is made to the following individual for the benefit of the child:
  - The surviving spouse or the surviving parent if the child resided with that individual at the time of decedent's death.
  - The child's general guardian or guardian of the estate if the child resided with neither the surviving spouse nor the surviving parent at the time of the decedent's death, and to the Clerk of Court, if there is not a general guardian or guardian of the estate.
- The clerk of court can handle the inquiry into the assets available to pay the allowance(s) and to whom an allowance is to be paid or can assign this duty to a magistrate.

## **ANALYSIS:**

Section 1.2 of S.L. 2023-120 reorganizes the statutes in Article 4 of Chapter 30 of the General Statutes by repealing eight statutes (Section 1.1) and incorporating the majority of those provisions in the amended statutes contained in Sections 1.2 and 1.3 of the act.

**Section 1.2** amends the yearly allowance statutes by:

- Eliminating the use of magistrates.
- Clarifying that the spouse's yearly allowance is charged against their share of the estate if the decedent has a will and that the yearly allowance is in addition to the spouse's share if the decedent dies without a will.
- Requiring a surviving spouse or representative for a child to file a verified petition with the clerk of court to request their allowance. There is no time frame in which this must be done unless Letters Testamentary or Letters of Administration have been issued. If Letters have been issued, the petition requesting the allowance must be filed within six months of the issuance date.
  - The child's representative must have the following order of priority in designation:
    - General guardian or guardian of the estate, if any.
    - Surviving parent of the child if the child resides with the surviving parent.
    - The person with whom the child resides.

# Senate Bill 218

Page 3

- If the clerk determines that no individual listed above is fit or suitable, the clerk can appoint another individual they determine to better represent the best interests of the child.
- Providing that if the surviving spouse dies after the petition requesting the allowance is filed but before any deficiency is paid, the deficiency must not expire.
- Providing that payment of the surviving spouse's full yearly allowance must take priority over payment of a child's yearly allowance.
- Limiting a child's yearly allowance to children under 21 at the time of the decedent's death, including a child in utero and a child for whom the decedent stood in loco parentis at the time of death and increasing the yearly allowance to ten thousand dollars (\$10,000).
- Providing that assets awarded as part of a yearly allowance which are paid directly to the spouse or child's representative and do not come into possession of the personal representative are not reported on the inventory for the estate or any accounting.
- If the yearly allowance for a spouse or child is determined without a hearing, any person with standing, including the personal representative, can file suit to challenge the yearly allowance award.

## **Section 1.3. Return of decedent's property to their estate.**

- G.S. 28A-15-10 allows a personal representative to sue for the return of the decedent's real and personal property to the decedent's estate under certain circumstances when there are insufficient funds to pay creditor's claims and expenses of the estate.
- Section 1.3 of S.L. 2023-120 requires that any assets recovered under this provision be used to pay any outstanding yearly allowance for a spouse and child before any creditor of the decedent or estate is paid from the recovered assets.

## **PART II. CHANGES TO TREATMENT OF FORMER SPOUSES IN ESTATES AND TRUSTS**

### **Section 2.1. G.S. 31-5.4 Revocation by divorce or annulment; revival.**

G.S. 31-5.4 currently provides that only provisions of a will in favor of a former spouse are revoked including appointment as trustee, executor, guardian, or custodian, and that remarriage of the spouses revives the revoked provisions of the existing will.

Section 2.1 of S.L. 2023-130 amends G.S. 31-5.4 to provide that a former spouse must be considered to have predeceased the testator for all purposes under the will when a testator fails to revise their will after the marriage ends through divorce or annulment. In addition to allowing revival of these provisions through remarriage, the amendment allows the testator to revive the provisions through a subsequent testamentary document which makes express reference to the will and modifies the will. This amendment aligns the language of G.S. 31-5.4 with the language of G.S. 36C-6-606 such that the same result for a former spouse would occur in a will as would occur in a revocable trust.

### **Section 2.2. G.S. 36C-6-606. Revocation of provisions in revocable trust by divorce or annulment; revival.**

G.S. 36C-6-606 provides that a former spouse is treated as having predeceased the settlor of a revocable trust for all purposes when the settlor dies without having changed the language of the revocable trust to remove the former spouse from benefiting or serving under the trust in any manner.

Section 2.2 of S.L. 2023-120 amends G.S. 36C-6-606 to conform to the proposed language of G.S. 31-5.4.

# Senate Bill 218

*Page 4*

**EFFECTIVE DATE:** Sections 1.2 and 1.3 are effective March 1, 2024, and applies to decedents dying on or after that date. Sections 2.1 and 2.2 are effective March 1, 2024, and applies to wills probated on or after that date. Except as otherwise provided, this act is effective March 1, 2024.