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ARTICLE 2.

INTESTATE SUCCESSION AND WILLS

PART 1.

INTESTATE SUCCESSION

**SECTION 62‑2‑101.** Intestate estate.

Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this Code.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑102.** Share of the spouse.

The intestate share of the surviving spouse is:

(1) if there is no surviving issue of the decedent, the entire intestate estate;

(2) if there are surviving issue, one‑half of the intestate estate.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑103.** Share of heirs other than surviving spouse.

The part of the intestate estate not passing to the surviving spouse under Section 62‑2‑102, or the entire estate if there is no surviving spouse, passes as follows:

(1) to the issue of the decedent: if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree then those of more remote degree take by representation;

(2) if there is no surviving issue, to his parent or parents equally;

(3) if there is no surviving issue or parent, to the issue of the parents or either of them by representation;

(4) if there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half;

(5) if there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, but the decedent is survived by one or more great‑grandparents or issue of great‑grandparents, half of the estate passes to the surviving paternal great‑grandparents in equal shares, or to the surviving paternal great‑grandparent if only one survives, or to the issue of the paternal great‑grandparents if none of the great‑grandparents survive, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving great‑grandparent or issue of a great‑grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half;

(6) if there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, great‑grandparent or issue of a great‑grandparent, but the decedent is survived by one or more stepchildren or issue of stepchildren, the estate passes to the surviving stepchildren and to the issue of any deceased stepchildren; if they are all of the same degree of step‑kinship to the decedent they take equally, but if of unequal degree then those of more remote degree take by representation.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 10.

**SECTION 62‑2‑104.** Requirement that heir survive decedent for one hundred twenty hours.

Any person who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent for purposes of Section 62‑2‑401 and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by one hundred twenty hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of the intestate estate by the State under Section 62‑1‑105.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 11.

**SECTION 62‑2‑105.** No taker.

If there is no taker under the provisions of this article [Sections 62‑2‑101 et seq.], the intestate estate passes to the State of South Carolina.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑106.** Representation; disclaimer by intestate beneficiary.

If representation is called for by this Code, the estate is divided into as many equal shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among his issue in the same manner. If an interest created by intestate succession is disclaimed, the beneficiary is not treated as having predeceased the decedent for purposes of determining the generation at which the division of the estate is to be made.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 12.

**SECTION 62‑2‑107.** Kindred of half blood.

Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 13.

**SECTION 62‑2‑108.** Afterborn heirs.

Issue of the decedent (but no other persons) conceived before his death but born within ten months thereafter inherit as if they had been born in the lifetime of the decedent.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 14.

**SECTION 62‑2‑109.** Meaning of child and related terms.

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) from the date the final decree of adoption is entered, and except as otherwise provided in Section 63‑9‑1120, an adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent.

(2) In cases not covered by (1), a person born out of wedlock is a child of the mother. That person is also a child of the father if:

(i) the natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

(ii) the paternity is established by an adjudication commenced before the death of the father or within the later of eight months after the death of the father or six months after the initial appointment of a personal representative of his estate and, if after his death, by clear and convincing proof, except that the paternity established under this subitem (ii) is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his and has not refused to support the child.

(3) A person is not the child of a parent whose parental rights have been terminated under Section 63‑7‑2580 of the 1976 Code, except that the termination of parental rights is ineffective to disqualify the child or its kindred to inherit from or through the parent.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 4; 1990 Act No. 521, Section 15; 1997 Act No. 152, Section 6.

**SECTION 62‑2‑110.** Advancements.

If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing signed by the decedent or acknowledged in a writing signed by the heir to be an advancement. For this purpose, the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property shall be taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑111.** Debts to decedent.

A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑112.** Alienage.

No person is disqualified to take as an heir because he, or a person through whom he claims, is or has been an alien.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑113.** Persons related to decedent through two lines.

A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship which would entitle him to the larger share.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑114.** Limitation on parent's entitlement as intestate heirs to estate proceeds; failure to provide support for decedent during minority.

Notwithstanding any other provision of law, if the parents of the deceased would be the intestate heirs pursuant to Section 62‑2‑103(2), upon the motion of either parent or any other party of potential interest based upon the decedent having died intestate, the probate court may deny or limit either or both parent's entitlement for a share of the proceeds if the court determines, by a preponderance of the evidence, that the parent or parents failed to reasonably provide support for the decedent as defined in Section 63‑5‑20 and did not otherwise provide for the needs of the decedent during his or her minority.

HISTORY: 1996 Act No. 370, Section 1.

PART 2.

ELECTIVE SHARE OF SURVIVING SPOUSE

**SECTION 62‑2‑201.** Right of elective share.

(a) If a married person domiciled in this State dies, the surviving spouse has a right of election to take an elective share of one‑third of the decedent's probate estate, as computed under Section 62‑2‑202, the share to be satisfied as detailed in Sections 62‑2‑206 and 62‑2‑207 and, generally, under the limitations and conditions hereinafter stated.

(b) If a married person not domiciled in this State dies, the right, if any, of the surviving spouse to take an elective share in property in this State is governed by the law of the decedent's domicile at death.

(c) "Surviving spouse", as used in this Part, is as defined in Section 62‑2‑802.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 5.

**SECTION 62‑2‑202.** Probate estate.

For purposes of this Part, probate estate means the decedent's property passing under the decedent's will plus the decedent's property passing by intestacy, reduced by funeral and administration expenses and enforceable claims.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 6.

**SECTION 62‑2‑203.** Exercise of right of election by surviving spouse.

The right of election of the surviving spouse may be exercised only during his lifetime by him or by his duly appointed attorney in fact. In the case of a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to his property are pending.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑204.** Voluntary waiver of surviving spouse's right to elective share, homestead allowance, and exempt property; property settlement in anticipation of divorce.

(A) The rights of a surviving spouse to an elective share, homestead allowance, and exempt property, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver voluntarily signed by the waiving party after fair and reasonable disclosures to the waiving party of the other party's property and financial obligations have been given in writing.

(B) Unless it provides to the contrary, a waiver of all rights in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, and exempt property by each spouse in the property of the other and a disclaimer by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of a will executed before the waiver or property settlement.

HISTORY: 1986 Act No. 539, Section 1; 2008 Act No. 173, Section 1, eff February 4, 2008, applicable to all waivers executed after that date.

**SECTION 62‑2‑205.** Proceedings for elective share; time limit.

(a) The surviving spouse may elect to take his elective share in the probate estate by filing in the court and serving upon the personal representative, if any, a summons and petition for the elective share within eight months after the date of death or within six months after the probate of the decedent's will, whichever limitation last expires.

(b) The surviving spouse shall give notice of the time and place set for hearing to the personal representative and to distributees and recipients of portions of the probate estate whose interests will be adversely affected by the taking of the elective share.

(c) The surviving spouse may withdraw or reduce his demand for an elective share at any time before entry of a final determination by the court.

(d) After notice and hearing, the court shall determine the amount of the elective share and shall order its payment from the assets of the probate estate or by contribution as set out in Sections 62‑2‑206 and 62‑2‑207.

(e) The order or judgment of the court for payment or contribution may be enforced as necessary in other courts of this State or other jurisdictions.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 7; 2010 Act No. 244,Section 5, eff June 7, 2010.

**SECTION 62‑2‑206.** Effect of election on benefits by will or statute.

A surviving spouse is entitled to benefits provided under or outside of the decedent's will, by any homestead allowance, by Section 62‑2‑401, whether or not he elects to take an elective share, but such amounts as pass under the will or by intestacy, by any homestead allowance, and by Section 62‑2‑401 are to be charged against the elective share pursuant to Section 62‑2‑207(a).

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 16.

**SECTION 62‑2‑207.** Charging spouse with gifts received; liability of others for balance of elective share.

(a) In the proceeding for an elective share, all property, including beneficial interest, which passes or has passed to the surviving spouse under the decedent's will or by intestacy, by a homestead allowance, and by Section 62‑2‑401, or which would have passed to the spouse but was renounced, or which is contained in a trust created by the decedent's will or a trust as described in Section 62‑7‑401(c) in which the spouse has a beneficial interest, is applied first to satisfy the elective share and to reduce contributions due from other recipients of transfers included in the probate estate. A beneficial interest that passes or has passed to a surviving spouse under the decedent's will includes an interest as a beneficiary in a trust created by the decedent's will or an interest as a beneficiary in property passing under the decedent's will to an inter vivos trust created by the decedent. For purposes of this subsection, the value of the electing spouse's beneficial interest in property which qualifies or would have qualified for the federal estate tax marital deduction pursuant to Section 2056 of the Internal Revenue Code, as amended and in effect on December 31, 2009, must be computed at the full value of the qualifying property. Qualifying for these purposes must be determined without regard to whether an election has been made to treat the property as qualified terminable interest property.

(b) Remaining property of the probate estate is applied so that liability for the balance of the elective share of the surviving spouse is satisfied from the probate estate with devises abating in accordance with Section 62‑3‑902.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 8; 1990 Act No. 521, Section 17; 2010 Act No. 181, Section 1, eff May 28, 2010.

PART 3.

SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

**SECTION 62‑2‑301.** Omitted spouse.

(a) If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse, upon compliance with the provisions of subsection (c), shall receive the same share of the estate he would have received if the decedent left no will unless:

(1) it appears from the will that the omission was intentional; or

(2) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) In satisfying a share provided by this section, the devises made by the will abate as provided in Section 62‑3‑902.

(c) The spouse may claim a share as provided by this section by filing in the court and mailing or delivering to the personal representative, if any, a claim for such share within eight months after the date of death or within six months after the probate of the decedent's will, whichever limitation last expires.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 9; 1990 Act No. 521, Section 18.

**SECTION 62‑2‑302.** Pretermitted children.

(a) If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child, upon compliance with subsection (d), receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

(1) it appears from the will that the omission was intentional; or

(2) when the will was executed the testator had one or more children and devised substantially all his estate to his spouse; or

(3) the testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) If, at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes that child to be dead, the child, upon compliance with subsection (d), receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

(c) In satisfying a share provided by this section, the devises made by the will abate as provided in Section 62‑3‑902.

(d) The child, and his guardian or conservator acting for him, may claim a share as provided by this section by filing in the court and mailing or delivering to the personal representative, if any, a claim for such share within eight months after the date of death or within six months after the probate of the decedent's will, whichever limitation last expires.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 10; 1990 Act No. 521, Section 19; 1997 Act No. 152, Section 7.

PART 4.

EXEMPT PROPERTY

**SECTION 62‑2‑401.** Exempt property.

The surviving spouse of a decedent who was domiciled in this State is entitled from the estate to a value not exceeding five thousand dollars in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, minor or dependent children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than five thousand dollars, or if there is not five thousand dollars worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the five thousand dollar value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate except claims described in Section 62‑3‑805(a)(1). These rights are in addition to any right of homestead and personal property exemption otherwise granted by law but are chargeable against and not in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by the elective share. Any surviving spouse or minor or dependent children of the decedent who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent for purposes of this section.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 20.

**SECTION 62‑2‑402.** Source, determination, and documentation.

(a) If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, the guardians or conservators of the minor children, or children who are adults may select property of the estate as exempt property. The personal representative may make these selections if the surviving spouse, the children, or the guardians or conservators of the minor children are unable or fail to do so within a reasonable time or if there are no guardians or conservators of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may make application to the court for appropriate relief.

(b) The surviving spouse or the minor or dependent child, and the minor's guardian or conservator acting for him, as the case may be, may claim a share of exempt property as provided in this part by filing in the court and mailing or delivering to the personal representative, if any, a claim for such share within eight months after the date of death, or within six months after the probate of the decedent's will, whichever limitation last expires.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 11; 1990 Act No. 521, Section 21; 2010 Act No. 244, Section 6, eff June 7, 2010.

**SECTION 62‑2‑403.** Federal veteran payments shall be exempt from creditors' claims.

All moneys paid by the United States of America to the executors, administrators, or heirs‑at‑law of any deceased veteran of the Spanish‑American War, World War I, or World War II whose estate is administered in this State for insurance, compensation, or pensions is hereby declared to be exempt from the claims of any and all creditors of such deceased veteran.

HISTORY: 1986 Act No. 539, Section 1.

PART 5.

WILLS

**SECTION 62‑2‑501.** Who may make a will.

A person who is of sound mind and who is not a minor as defined in Section 62‑1‑201(24) may make a will.

HISTORY: 1986 Act No. 539, Section 1; 1997 Act No. 152, Section 8.

**SECTION 62‑2‑502.** Execution.

Except as provided for writings within Section 62‑2‑512 and wills within Section 62‑2‑505, every will, shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction, and shall be signed by at least two persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 22.

**SECTION 62‑2‑503.** Attestation and self‑proving.

(a) Any will may be simultaneously executed, attested, and made self‑proved. The self‑proof shall be effective upon the acknowledgment by the testator and the affidavit of at least one witness, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in the following form or in a similar form showing the same intent:

I, \_\_\_\_\_\_\_\_\_\_, the testator, sign my name to this instrument this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 19\_\_\_, 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.

We, \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_, the witnesses, sign our names to this instrument, and at least one of us, being first duly sworn, does hereby declare, generally and to the undersigned authority, that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for 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 that 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.

(b) An attested will may at any time subsequent to its execution be made self‑proved by the acknowledgment thereof by the testator and the affidavit of at least one witness, each made before an officer authorized to administer oaths under the laws of the state where the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached, or annexed to the will in the following form or in a similar form showing the same intent:

The State of \_\_\_\_\_\_\_\_\_\_ County of \_\_\_\_\_\_\_\_\_\_ We, \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_, the testator and at least one of the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly (or willingly directed another to sign for him), and that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and to the best of his knowledge the testator was at that time eighteen years of age or older, of sound mind, and under no constraint or undue influence.

(c) A witness to any will who is also an officer authorized to administer oaths under the laws of this State may notarize the signature of the other witness of the will in the manner provided by this section.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 12; 1988 Act No. 659, Section 15.

**SECTION 62‑2‑504.** Subscribing witnesses not incompetent because of interest; effect on gifts to them.

No subscribing witness to any will, testament, or codicil may be held incompetent to attest or prove the same by reason of any devise, legacy, or bequest therein in favor of such witness or the husband or wife of such witness, by reason of any appointment therein of such witness or the husband or wife of such witness to any office, trust, or duty, or by reason of any charge therein of debts to any part of the estate in favor of such witness as creditor. Any such devise, legacy, or bequest is valid and effectual, if otherwise so, but unless there are two other and disinterested witnesses then so far as the property, estate, or interest so devised or bequeathed exceeds in value any property, estate, or interest to which such witness or the husband or wife of such witness would be entitled upon the failure to establish such will, testament, or codicil, such devise, legacy, or bequest is null and void to the extent of such excess. Any such appointment is valid, if otherwise so, and the person so appointed, in such case, is entitled by law to take or receive any commissions or other compensation on account thereof.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 23.

**SECTION 62‑2‑505.** Choice of law as to execution.

A written will is valid if executed in compliance with Section 62‑2‑502 either at the time of execution or at the date of the testator's death or if its execution complies with the law at the time of execution of (1) the place where the will is executed, or (2) the place where the testator is domiciled at the time of execution or at the time of death.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 13.

**SECTION 62‑2‑506.** Revocation by writing or by act.

A will or any part thereof is revoked:

(1) by a subsequent will which revokes the prior will or part expressly or by inconsistency; or

(2) by being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑507.** Revocation by divorce, annulment, and order terminating marital property rights; no revocation by other changes of circumstances.

If after executing a will the testator is divorced or his marriage annulled or his spouse is a party to a valid proceeding concluded by an order purporting to terminate all marital property rights or confirming equitable distribution between spouses, the divorce or annulment or order revokes any disposition or appointment of property including beneficial interests made by the will to the spouse, any provision conferring a general or special power of appointment on the spouse, and any nomination of the spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a spouse because of revocation by divorce or annulment or order passes as if the spouse failed to survive the decedent, and other provisions conferring some power or office on the spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. For purposes of this section, divorce or annulment or order means any divorce or annulment or order which would exclude the spouse as a surviving spouse within the meaning of subsections (b) and (c) of Section 62‑2‑802. A decree of separate maintenance which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of marital or parental circumstances other than as described in this section revokes a will.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 24.

**SECTION 62‑2‑508.** Revival of revoked will.

(a) The revocation by acts under Section 62‑2‑506(2) of a will made subsequent to a former will, where the subsequent will would have revoked the former will if the subsequent will had remained effective at the death of the testator, shall not revive or make effective any former will unless it appears by clear, cogent, and convincing evidence that the testator intended to revive or make effective the former will.

(b) The revocation by a third will under Section 62‑2‑506(1) of a will made subsequent to a former will, where the subsequent will would have revoked the former will if the subsequent will had remained effective at the death of the testator, shall not revive or make effective any former will except to the extent it appears from the terms of the third will that the testator intended the former will to take effect.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑509.** Incorporation by reference.

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑510.** Additions to trusts.

(a) A devise or bequest, the validity of which is determinable by the law of this State, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) if the trust is identified in the testator's will and its terms are set forth in a written instrument (other than a will) executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator (regardless of the existence, size, or character of the corpus of the trust). The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised (1) is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given and (2) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator (regardless of whether made before or after the execution of the testator's will), and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator causes the devise to lapse.

(b) Death benefits of any kind, including but not limited to proceeds of life insurance policies and payments under an employees' trust, or contract of insurance purchased by such a trust, forming part of a pension, stock‑bonus or profit‑sharing plan, or under a retirement annuity contract, may be paid to the trustee of a trust established by the insured, employee, or annuitant or by some other person if the trust is in existence at the death of the insured, employee, or annuitant, it is identified and its terms are set forth in a written instrument, and such death benefits shall be administered and disposed of in accordance with the provisions of the instrument setting forth the terms of the trust including any amendments made thereto before the death of the insured, employee, or annuitant and, if the instrument so provides, including any amendments to the trust made after the death of the insured, employee, or annuitant. It shall not be necessary to the validity of any such trust instrument, whether revocable or irrevocable, that it have a trust corpus other than the right of the trustee to receive such death benefits.

(c) Death benefits of any kind, including but not limited to proceeds of life insurance policies and payments under an employees' trust, or contract of insurance purchased by such a trust, forming part of a pension, stock‑bonus, or profit‑sharing plan, or under a retirement annuity contract, may be paid to a trustee named, or to be named, in a will which is admitted to probate as the last will of the insured or the owner of the policy, or the employee covered by such plan or contract, as the case may be, whether or not such will is in existence at the time of such designation. Upon the admission of such will to probate, and the payment thereof to the trustee, such death benefits shall be administered and disposed of in accordance with the provisions of the testamentary trust created by the will as they exist at the time of the death of the testator. Such payments shall be deemed to pass directly to the trustee of the testamentary trust and shall not be deemed to have passed to or be receivable by the executor of the estate of the insured, employee, or annuitant.

(d) In the event no trustee makes proper claim to the proceeds payable as provided in subsections (b) and (c) of this section from the insurance company or the obligor within a period of one year after the date of the death of the insured, employee, or annuitant, or if satisfactory evidence is furnished to the insurance company or other obligor within such one year period that there is or will be no trustee to receive the proceeds, payment must be made by the executors or administrators of the person making such designations, unless otherwise provided by agreement.

(e) Death benefits payable as provided in subsections (b) and (c) of this section shall not be subject to the debts of the insured, employee, or annuitant nor to transfer or estate taxes to any greater extent than if such proceeds were payable to the beneficiary of such trust and not to the estate of the insured, employee, or annuitant.

(f) Such death benefits payable as provided in subsections (b) and (c) of this section so held in trust may be commingled with any other assets which may properly come into such trust.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑511.** Events of independent significance.

A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑512.** Separate writing identifying bequest of tangible property.

A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title (as defined in Section 36‑1‑201(15)), securities (as defined in Section 36‑8‑102(1)(A)), and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 25.

PART 6.

CONSTRUCTION

**SECTION 62‑2‑601.** Rules of construction and intention.

The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this part apply unless a contrary intention is indicated by the will.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑602.** Construction that will passes all property; after‑acquired property.

A will is construed to pass all property which the testator owns at his death including property acquired after the execution of the will.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑603.** Anti‑lapse; deceased devisee; class gifts.

If a devisee, who is a great‑grandparent or a lineal descendant of a great‑grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree then those of more remote degree take by representation. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑604.** Failure of testamentary provision.

(a) Except as provided in Section 62‑2‑603, if a devise other than a residuary devise fails for any reason it becomes a part of the residue.

(b) Except as provided in Section 62‑2‑603 if the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑605.** Change in securities; accessions; nonademption.

(a) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(1) as much of the devised securities as is a part of the estate at the time of the testator's death;

(2) any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options;

(3) securities of another entity owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity;

(4) any additional securities of the entity owned by the testator as a result of a plan of reinvestment if it is a regulated investment company.

(b) Distributions prior to death with respect to a specifically devised security not provided for in subsection (a) are not part of the specific devise.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 26.

**SECTION 62‑2‑606.** Nonademption of specific devises in certain cases; unpaid proceeds of sale, condemnation or insurance; sale by conservator.

(a) Where a portion of property specifically devised is no longer owned by the testator at the time of death, a specific devisee has the right to the remaining specifically devised property and:

(1) any balance of the purchase price (together with any mortgage or other security interest) owing from a purchaser to the testator at death by reason of sale of the property;

(2) any amount of a condemnation award for the taking of the property unpaid at death;

(3) any proceeds unpaid at death on fire or casualty insurance on the property;

(4) property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

(b) If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if subsequent to the sale, condemnation, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (a).

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑607.** Nonexoneration.

A specific devise passes subject to any mortgage, pledge, security interest or other lien existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 27.

**SECTION 62‑2‑608.** Exercise of power of appointment.

A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑609.** Construction of generic terms to accord with relationships as defined for intestate succession.

Half bloods, adopted persons, and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑610.** Ademption by satisfaction.

Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑611.** Construction that devise passes fee simple.

A devise of land is construed to pass an estate in fee simple, regardless of the absence of words of limitation in the devise.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑2‑612.** Proceeding to determine decedent's intent regarding application of certain federal tax formulas.

The personal representative, trustee, or any affected beneficiary under a will, trust, or other instrument of a decedent who dies or did die after December 31, 2009, and before January 1, 2011, may bring a proceeding to determine the decedent's intent when the will, trust, or other instrument contains a formula that is based on the federal estate tax or generation‑skipping tax. The proceeding must be commenced within twelve months following the death of the decedent.

HISTORY: 2010 Act No. 251, Section 1, eff June 11, 2010.

PART 7.

CONTRACTUAL ARRANGEMENTS RELATING TO DEATH

**SECTION 62‑2‑701.** Contracts concerning succession.

A contract to make a will or devise, or to revoke a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this act, can be established only by (1) provisions of a will of the decedent stating material provisions of the contract; (2) an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract and extrinsic evidence proving the terms of the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 28.

PART 8.

GENERAL PROVISIONS

**SECTION 62‑2‑801.** Disclaimer.

(a) In addition to any methods available under existing law, statutory or otherwise, if a person (or his executor, administrator, successor, personal representative, special administrator, guardian, attorney‑in‑fact, trustee, committee, conservator, or his other fiduciary or agent who performs substantially similar functions under the law governing his status, acting with or without the approval of a specific court order and with or without the receipt of consideration for the act), as a disclaimant, makes a disclaimer as defined in Section 12‑16‑1910 of the 1976 Code, with respect to any transferor's transfer (including transfers by any means whatsoever, lifetime and testamentary, voluntary and by operation of law, initial and successive, by grant, gift, trust, contract, intestacy, wrongful death, elective share, forced share, homestead allowance, exempt property allowance, devise, bequest, beneficiary designation, survivorship provision, exercise and nonexercise of a power, and otherwise) to him of any interest in, including any power with respect to, property, or any undivided portion thereof, the interest, or such portion, is considered never to have been transferred to the disclaimant.

(b) The right to disclaim exists notwithstanding any limitation on the disclaimant's interest in the nature of a spendthrift provision or similar restriction.

(c) The right to disclaim is barred by the disclaimant's written waiver of the right.

(d) Unless the transferor has provided otherwise in the event of a disclaimer, the disclaimed interest shall be transferred (or fail to be transferred, as the case may be) as if the disclaimant had predeceased the date of effectiveness of the transfer of the interest; the disclaimer shall relate back to that date of effectiveness for all purposes; and any future interest which is provided to take effect in possession or enjoyment after the termination of the disclaimed interest shall take effect as if the disclaimant had predeceased the date on which he or she as the taker of the disclaimed interest became finally ascertained and the disclaimed interest became indefeasibly vested; provided, that an interest disclaimed by a disclaimant who is the spouse of a decedent, the transferor of the interest, may pass by any further process of transfer to such spouse, notwithstanding the treatment of the transfer of the disclaimed interest as if the disclaimant had predeceased.

(e) The date of effectiveness of the transfer of the disclaimed interest is (1) as to transfers by intestacy, wrongful death, elective share, forced share, homestead allowance, exempt property allowance, devise and bequest, the date of death of the decedent transferor of, or that of the donee of a testamentary power of appointment (whether exercised or not exercised) with respect to, the interest, as the case may be, and (2) as to all other transfers, the date of effectiveness of the instrument, contract, or act of transfer.

(f) It is the intent of the legislature of the State of South Carolina by this provision to clarify the laws of this State with respect to the subject matter hereof in order to ensure the ability of persons to disclaim interests in property without the imposition of federal and state estate, inheritance, gift, and transfer taxes. This provision is to be interpreted and construed in accordance with, and in furtherance of, that intent.

(g) With the court's approval, a personal representative, trustee, or similar fiduciary may disclaim any one or more of the powers granted to the personal representative, trustee, or similar fiduciary. Any disclaimer must be made by written instrument in the manner provided in subsection (a) and has the same effect as in subsection (d). The disclaimer of a power may be made binding on any successor fiduciary, if the disclaiming fiduciary so declares when making the disclaimer.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 70 Section 7; 1990 Act No. 521, Section 29.

**SECTION 62‑2‑802.** Effect of divorce, annulment, decree of separate maintenance, or order terminating marital property rights.

(a) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separate maintenance which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(b) For purposes of Parts 1, 2, 3, and 4 of Article 2 [Sections 62‑2‑101 et seq., 62‑2‑201 et seq., 62‑2‑301 et seq., and 62‑2‑401 et seq.] and of Section 62‑3‑203, a surviving spouse does not include:

(1) a person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this State, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as husband and wife;

(2) a person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or

(3) a person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights or confirming equitable distribution between spouses.

(4) a person claiming to be a common law spouse who has not been established to be a common law spouse by an adjudication commenced before the death of the decedent or within the later of eight months after the death of the decedent or six months after the initial appointment of a personal representative; if the action is commenced after the death of the decedent, proof must be by clear and convincing evidence.

(c) A divorce or annulment is not final until signed by the court and filed in the office of the clerk of court.

HISTORY: 1986 Act No. 539, Section 1; 1997 Act No. 152, Section 9.

**SECTION 62‑2‑803.** Effect of homicide on intestate succession, wills, joint assets, life insurance, and beneficiary designations.

(a) A surviving spouse, heir, or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this article, and the estate of decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(b) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint and multiple‑party accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co‑ownership with survivorship incidents.

(c) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(d) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section. A beneficiary whose interest is increased as a result of feloniously and intentionally killing shall be treated in accordance with the principles of this section.

(e) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

(f) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer, for value and without notice, property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

(g) For purposes of this section, the killer is considered to have predeceased the decedent if the killer dies within one hundred twenty hours after feloniously and intentionally killing the decedent.

HISTORY: 1986 Act No. 539, Section 1; 1997 Act No. 152, Section 10.

**SECTION 62‑2‑804.** Effect of provision for survivorship on succession to joint tenancy.

When any person is seized or possessed of any real property held in joint tenancy at the time of his death, the joint tenancy is deemed to have been severed by the death of the joint tenant and the real property is distributable as a tenancy in common unless the instrument which creates the joint tenancy in real property, including any instrument in which one person conveys to himself and one or more other persons, or two or more persons convey to themselves, or to themselves and another or others, expressly provides for a right of survivorship, in which case the severance does not occur. While other methods for the creation of a joint tenancy in real property may be utilized, an express provision for a right of survivorship is conclusively considered to have occurred if the will or instrument of conveyance contains the names of the devisees or grantees followed by the words "as joint tenants with right of survivorship and not as tenants in common".

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 14; 1996 Act No. 405,Section 1; 2000 Act No. 398, Section 3; 2010 Act No. 266, Section 1, eff June 24, 2010.

**SECTION 62‑2‑805.** Presumption of ownership of tangible personal property; exceptions.

(A) For purposes of this article, tangible personal property in the joint possession or control of the decedent and the surviving spouse at the time of the decedent's death is presumed to be owned by the decedent and the decedent's spouse in joint tenancy with right of survivorship if ownership is not evidenced otherwise by a certificate of title, bill of sale, or other writing. This presumption does not apply to property:

(1) acquired by either spouse before marriage;

(2) acquired by either spouse by gift or inheritance during the marriage;

(3) used by the decedent spouse in a trade or business in which the surviving spouse has no interest;

(4) held for another; or

(5) devised in a written statement or list disposing of tangible personal property pursuant to Section 62‑2‑512.

(B) The presumption created in this section may be overcome by a preponderance of the evidence demonstrating that ownership was held other than in joint tenancy with right of survivorship.

HISTORY: 2010 Act No. 266, Section 2, eff June 24, 2010.

PART 9.

DELIVERY AND SUPPRESSION OF WILLS

**SECTION 62‑2‑901.** Delivery of will to judge of probate; filing.

Every executor, devisee, legatee, trustee, guardian, attorney, or other person having in his possession, custody, or control any last will and testament, including any codicil or codicils thereto, of any person dying must within thirty days after notice or knowledge of the death of the testator deliver such last will and testament, including any codicil or codicils thereto, to the judge of the probate court having jurisdiction to admit the same to probate and such judge of probate shall file the same in his court and if proceedings for the probate are not begun within thirty days he must publish a notice of such delivery and filing in one of the newspapers in his county for fifteen days. Any executor, devisee, legatee, guardian, attorney, or other person who fails to deliver to the judge of the probate court having jurisdiction to admit it to probate any last will and testament, including any codicil or codicils thereto, upon conviction must be punished as for a misdemeanor. Any person who intentionally or fraudulently destroys, suppresses, conceals, or fails to deliver to the judge of the probate court having jurisdiction to admit it to probate any last will and testament, including any codicil or codicils thereto, for the purpose and with the intent to prevent the institution of proceedings for its probate shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year, or both, in the discretion of the court.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 15.