SIDE-BY-SIDE

ARTICLE 2- Intestate Succession and Wills- Parts 5 and 6

ARTICLE 2- Parts 5 and 6- Existing Code	Bill # S. 1243-Article 2- Parts 5 and 6
Article 2.Part 5. Wills	Article 2.Part 5.
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. REPORTER'S COMMENTS Section 62-2-501, read with Section 62-2-101, allows any person of sound mind who is married or at least eighteen years old to make a will of his or her "estate". The "estate" which may be so devised is defined in item 11 of Section 62-1-201 as "property", in turn defined in item 33 of Section 62-1-201 as both real and personal and "anything that may be the subject of ownership". No distinction on the question of capacity to make a will is drawn by Section 62-2-501 between men and women or between citizens and aliens. Undoubtedly, Section 62-2-501, even when read with the very broad definitions contained in Sections 62-2-101, item 11 of 62-1-201, and item 33 of 62-1-201, supra, is not meant to reverse the South Carolina law with respect to tenants in fee simple conditional, Jones v. Postell, 16 S.C.L. 92 (Harp. L.) (1824), and tenants in joint tenancies with express provisions for right of survivorship, Davis v. Davis, 223 S.C. 182, 75 S.E.2d 46 (1953), in both cases the law disabling such tenants from passing their estates by will. The spirit, if not the letter, of this Code's provisions is opposed to the grant of any such novel right to devise. Tenants in joint tenancies lacking express survivorship provisions long have been able to devise their estates, and in the absence of a will such estates would have passed in intestacy. See Section 62-2-804. The elaborate body of case law developed in the application of former Sections 21-7-10, et seq., will continue to supply guidance in the application of Section 62-2-501. That case law concerns the matters of sufficient testamentary intent, Madden v. Madden, 237 S.C. 629, 118 S.E.2d 443 (1961), C. & S. Nat. Bank of S. C. v. Roach, 239 S.C. 291, 122 S.E.2d 644 (1961), including conditional wills, C. Karesh, Wills 42, 46-48 (1977); and sufficient mental capacity, Lee's Heirs v. Lee's Executor, 15 S.C.L. 183 (4 McC. L.) (1827), Hellams v. Ross, 268 S.C. 284,	**SECTION 62-2-501.** ~~A person~~ An individual who is of sound mind and who is not a minor as defined in Section 62-1-201~~(24)~~(27) may make a will. REPORTER'S COMMENTS Section 62-2-501 allows any individual of sound mind who is not a minor to make a will. An individual is not a minor if the individual is either (1) at least eighteen, (2) married, or (3) emancipated. An individual may make a will of his or her 'estate.' The estate which may be so devised is defined in item (11) of Section 62-1-201 as 'property', in turn defined in item (37) of Section 62-1-201 as both real and personal and 'anything that may be the subject of ownership.' No distinction on the question of capacity to make a will is drawn by Section 62-2-501 between men and women or between citizens and aliens. Section 62-2-501 is not meant to reverse the South Carolina law with respect to tenants in fee simple conditional, Jones v. Postell, 16 S.C.L. 92 (Harp. L.)(1824), and tenants in joint tenancies with express provisions for right of survivorship, Davis v. Davis, 223 S.C. 182, 75 S.E.2d 46 (1963)~~.~~ In both cases the law disabled such tenants from passing their estates by will. The spirit, if not the letter, of this Code's provisions is opposed to the grant of any such novel right to devise. Tenants who hold real property in joint tenancies lacking express survivorship provisions may devise their interest in such real property. In the absence of a will such tenant's interest in such real property will pass in intestacy. See Section 62-2-804. The elaborate body of case law developed in the application of former Sections 21-7-10, et seq., will continue to supply guidance in the application of Section 62-2-501. That case law concerns the matters of sufficient testamentary intent, Madden v. Madden, 237 S.C. 629, 118 S.E.2d 443 (1961), C. & S. Nat. Bank of S. C. v. Roach, 239 S.C. 291, 122 S.E.2d 644 (1961), including conditional wills, S. Alan Medlin, The Law of Wills and Trusts (S.C. Bar 2002) Section 305; and sufficient mental capacity, Lee's Heirs v. Lee's Executor, 15 S.C.L. 183 (4

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233 S.E.2d 98 (1977), C. Karesh, Wills 22-24 (1977), 1 C. Karesh, Course Notes: Wills 17-20-a; as well as the effect of undue influence, Farr v. Thompson, 25 S.C.L. 37 (Cheves L.) (1839); Thompson v. Farr, 28 S.C.L. 93 (1 Sp. L.) (1842); O'Neall v. Farr, 30 S.C.L. 80 (1 Rich. L.) (1844), Mock v. Dowling, 266 S.C. 274, 222 S.E.2d 773 (1976), Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d 415 (1982), C. Karesh, Wills 24-25 (1977); and the burdens of proof applicable and the presumptions of fact available with respect to mental capacity and undue influence, Havird v. Schissell, 252 S.C. 404, 166 S.E.2d 801 (1969), C. Karesh, Wills 23-25 (1977). The developed South Carolina case law also covers the matters of mistake in the execution of wills, Ex Parte King, 132 S.C. 63, 128 S.E. 850 (1925), C. Karesh, Wills 26-28 (1977); and fraud as it affects the making of wills, C. Karesh, Wills 28-29 (1977).	McC. L.) (1827), Hellams v. Ross, 268 S.C. 284, 233 S.E.2d 98 (1977), Medlin, supia at Section 301.2; as well as the effect of undue influence, Farr v. Thompson, 25 S.C.L. 37 (Cheves L.) (1839); Thompson v. Farr, 28 S.C.L. 93 (1 Sp. L.) (1842); O'Neall v. Farr, 30 S.C.L. 80 (1 Rich. L.) (1844), Mock v. Dowling, 266 S.C. 274, 222 S.E.2d 773 (1976), Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d 415 (1982), Medlin, supra at Section 301.4; and the burdens of proof applicable and the presumptions of fact available with respect to mental capacity and undue influence, Havird v. Schissell, 252 S.C. 404, 166 S.E.2d 801 (1969), Medlin, supra at Sections 301.2, 301.4. The developed South Carolina case law also covers the matters of mistake in the execution of wills, Ex Parte King, 132 S.C. 63, 128 S.E. 850 (1925), Medlin, supra at Section 301.2; and fraud as it affects the making of wills.
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.	**SECTION 62-2-502.** Except as provided for writings within Section 62-2-512 and wills within Section 62-2-505, every will~~,~~ shall be: (1) in writing; (2) signed by the testator or signed in the testator's name by some other ~~person~~ individual in the testator's presence and by ~~his~~ the testator's direction~~,~~; and (3) ~~shall be~~ signed by at least two ~~persons~~ individuals each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.
REPORTER'S COMMENTS Section 62-2-502 specifies the usual requirements for the valid formal execution of every will: a writing signed by the testator, or for him by another, and also signed by two witnesses, witnessing either the testator's signing or his acknowledgment of either his signature or the will. All of these formalities were required by prior South Carolina law, formerly Sections 21-7-20 and 21-7-50 of the 1976 code, which, however, further required that three witnesses sign and that they do so in the presence of the testator and of each other. The required number of witnesses is reduced from three to two with respect to all wills executed after June 27, 1984, the effective date of South Carolina's first statute recognizing the device of the self-proving will affidavit, formerly Section 21-7-615 of the 1976 code, embodied in Section 62-2-503 of this Code. That statute might have been read by some testators to allow for the valid execution and attestation of a will by only two witnesses. As the policy of this Code is to require just two witnesses at testation, it appears advisable to bring within the Code's protection any testators whose wills were attested by but two witnesses between June 28, 1984, and the effective date of	REPORTER'S COMMENTS Section 62-2-502 specifies the usual requirements for the valid formal execution of every will: a writing signed by the testator, or for him by another, and also signed by two witnesses, witnessing either the testator's signing or his acknowledgment of either his signature or the will. All of these formalities were required by prior South Carolina law, formerly Sections 21-7-20 and 21-7-50 of the 1976 code, which, however, further required that three witnesses sign and that they do so in the presence of the testator and of each other. The required number of witnesses is reduced from three to two with respect to all wills executed after June 27, 1984, the effective date of South Carolina's first statute recognizing the device of the self-proving will affidavit, formerly Section 21-7-615 of the 1976 code, embodied in Section 62-2-503 of this Code. That statute might have been read by some testators to allow for the valid execution and attestation of a will by only two witnesses. As the policy of this Code is to require just two witnesses at testation, it appears advisable to bring within the Code's protection any testators whose wills were attested by but two witnesses between June 28, 1984, and the effective date of

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this Code. Section 62-2-502 requires neither subscription of the testator's signature, i.e., that it appear at the end of the will, nor publication of the will, i.e., the testator's announcement to the witnesses that the document is his will, nor a specific request by the testator that the witnesses attest and sign. Each of these practices is, however, customary and unobjectionable. This Code does not recognize the holographic method of execution of a will, i.e., dispensing with the witnesses but requiring that the whole will be cast in the testator's handwriting and that it be signed by him. Such a will is not valid in South Carolina, unless specifically by valid out-state execution or out-state probate, which special rules are to be found at Sections 62-2-505, 62-3-303(c) and (d), and 62-3-408 of this Code. Further, this Code recognizes neither soldiers' and mariners' wills of personalty nor nuncupative wills of personalty, i.e., oral wills. The effect of Section 62-2-502 is that every will must be in an integrated writing, signed and witnessed as described, except only as provided in Sections 62-2-505 (written wills duly executed elsewhere) and 62-2-512 (writings disposing of tangible personal property). **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.	this Code. Section 62-2-502 requires neither subscription of the testator's signature, i.e., that it appear at the end of the will, nor publication of the will, i.e., the testator's announcement to the witnesses that the document is his will, nor a specific request by the testator that the witnesses attest and sign. Each of these practices is, however, customary and unobjectionable. This Code does not recognize the holographic method of execution of a will, i.e., dispensing with the witnesses but requiring that the whole will be cast in the testator's handwriting and that it be signed by him. Such a will is not valid in South Carolina, unless specifically by valid out-state execution or out-state probate, which special rules are to be found at Sections 62-2-505, 62-3-303(c) and (d), and 62-3-408 of this Code. Further, this Code recognizes neither soldiers' and mariners' wills of personalty nor nuncupative wills of personalty, i.e., oral wills. The effect of Section 62-2-502 is that every will must be in an integrated writing, signed and witnessed as described, except only as provided in Sections 62-2-505 (written wills duly executed elsewhere) and 62-2-512 (writings disposing of tangible personal property). **SECTION 62-2-503.** (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 <u>(or if under the age of eighteen, am married or emancipated as decreed by a family court)</u>, 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 <u>(or if under the age of eighteen, was married or emancipated as decreed by a family court)</u>, of sound mind, and under

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(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.	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 <u>(or if under the age of eighteen, was married or emancipated as decreed by a family court)</u>, 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.
REPORTER'S COMMENTS Section 62-2-503 provides for an expediting feature for the proof of wills. The self-proved will is a will into which an affidavit has been incorporated, signed by the testator, the witnesses and a notary, declaring the due execution of the will, the testamentary capacity of the testator and the absence of undue influence worked upon the testator. Probate of a self-proved will is freed of the requirement of producing the available testimony of such witnesses to the due execution of the will, as otherwise required by Sections 62-3-405 and 62-3-406 of this Code as to formal testacy proceedings. The testator's affidavit may be drafted into the testimonium clause of the will so that his one signature suffices for both the execution of the will and the execution of his affidavit. Similarly, the witnesses' affidavit may be drafted into their attestation clause, requiring each of them to sign only once. Section 62-2-503 (a). Alternatively, under Section 62-2-503(b), a will may be drafted with traditional testimonium and attestation clauses, requiring the signatures of the testator and the witnesses, respectively, with the affidavits of the testator and of the witnesses	REPORTER'S COMMENTS Section 62-2-503 provides for an expediting feature for the proof of wills. The self-proved will is a will into which an affidavit has been incorporated, signed by the testator, the witnesses and a notary, declaring the due execution of the will, the testamentary capacity of the testator and the absence of undue influence worked upon the testator. Probate of a self-proved will is freed of the requirement of producing the available testimony of such witnesses to the due execution of the will, as otherwise required by Sections 62-3-405 and 62-3-406 of this Code as to formal testacy proceedings. The testator's affidavit may be drafted into the testimonium clause of the will so that his one signature suffices for both the execution of the will and the execution of his affidavit. Similarly, the witnesses' affidavit may be drafted into their attestation clause, requiring each of them to sign only once. Section 62-2-503 (a). Alternatively, under Section 62-2-503(b), a will may be drafted with traditional testimonium and attestation clauses, requiring the signatures of the testator and the witnesses, respectively, with the affidavits of the testator and of the witnesses

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drafted as one, but separated from the testimonium and attestation clauses, and thus requiring each of such persons to sign a second time. The Section 62-2-503(b) form may be attached to a will executed simultaneously with the affidavit or, more to the point, a will executed at any time prior to the execution of the affidavit even one executed prior to the enactment of this statute. Section 62-2-503 makes a will self-proved if affidavits in "substantially" the form of those set forth in the section are executed. Therefore, neither merely formal variations, nor the subscription of the will and of the affidavit by more than two witnesses, nor the failure of one or more of the witnesses to sign the affidavit should frustrate the self-proof of the will by way of the affidavit, that is, at least not insofar as the proof of the will depends upon the testimony of the witnesses who do sign the affidavit.	drafted as one, but separated from the testimonium and attestation clauses, and thus requiring each of such persons to sign a second time. The Section 62-2-503(b) form may be attached to a will executed simultaneously with the affidavit or, more to the point, a will executed at any time prior to the execution of the affidavit, even one executed prior to the enactment of this statute. Section 62-2-503 makes a will self-proved if affidavits in 'substantially' the form of those set forth in the section are executed. Therefore, neither merely formal variations, nor the subscription of the will and of the affidavit by more than two witnesses, nor the failure of one or more of the witnesses to sign the affidavit should frustrate the self-proof of the will by way of the affidavit, that is, at least not insofar as the proof of the will depends upon the testimony of the witnesses who do sign the affidavit.
SECTION 62-2-504. Subscribing witnesses not incompetent because of interest; effect on gifts to them.	**SECTION 62-2-504.**
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.	(a) ~~No~~ A subscribing witness to any will~~, testament, or codicil may be held~~ is not incompetent to attest or prove the same by reason of any devise~~, legacy, or bequest~~ therein in favor of such witness, such witness's spouse, or such witness's issue ~~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~~ If there are two disinterested witnesses to a will in addition to the interested witness, then such devise~~, legacy, or bequest~~ is valid and effectual, if otherwise effective. ~~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,~~ If there are not two disinterested witnesses to a will in addition to an interested witness, then such devise~~, legacy, or bequest~~ is null and void to the extent of ~~such~~ the value of the excess property, estate, or interest so devised over the value of the property, estate or interest to which such witness, such witness's spouse, or such witness' issue would be entitled upon the failure to establish such will. The voided portion of such devise shall pass by intestacy in accordance with Section 62-2-101 et seq., provided the share of the interested witness, such witness's spouse, or such witness' issue shall not increase due to the devise passing by intestacy. (b) A subscribing witness to any will is not incompetent to attest or prove the will by reason of any appointment within the will of such witness, such witness's spouse, or such witness's

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	issue to any office, trust, or duty. The ~~Any such~~ appointment of a witness, a witness's spouse, or a witness's issue is valid, if otherwise so, and the ~~person~~ individual so appointed, in such case, is entitled by law to take or receive any commissions or other compensation on account thereof. (c) A subscribing witness to any will is not incompetent to attest or prove the will by reason of any charge within the will of debts to any part of the estate in favor of such witness, such witness's spouse, or such witness's issue as creditor.
REPORTER'S COMMENTS Under Section 62-2-504, read together with Section 62-3-406, concerning the competency of certain persons to act as witnesses to wills, and hence ultimately of the provable validity of the wills so witnessed, the rule is that no person is incompetent to testify in formal testacy proceedings under Section 62-3-406 of this Code because of his or his spouse's personal interest in the estate of the testator as it passes under the will. Also, on the effect that an interested person's witnessing of the will has on his or his spouse's personal interest under the will, the rule is that any such interest in excess of that amount to which the witness or his spouse would have been entitled without the will is void. Section 62-2-504 allows the payment of compensation to a person appointed to any office, trust, or duty under a will witnessed by that person or by his spouse.	REPORTER'S COMMENTS The purpose of this section is to remove from the interested witness any benefit to the witness from the will that the witness would not otherwise receive so that the witness can be used to prove the will. An 'interested witness' is an individual (1) who is named as a devisee in the testator's will; (2) whose spouse is named as a devisee in the testator's will, or (3) whose issue are named as devisees in the testator's will.
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.	**SECTION 62-2-505.** A written will is valid if: (a) it is executed in compliance with Section 62-2-502 either at the time of execution or at the date of the testator's death; or (b) if its execution complies with the law at the time of execution of either (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.
REPORTER'S COMMENTS Section 62-2-505 specifies the extraordinary requirements, alternative to the usual requirements of Section 62-2-502 of this Code, for the valid formal execution of a will: a writing executed in compliance with the law applicable at the time of the will's execution (not that at the time of the testator's date of death), of the place (whether South Carolina or elsewhere): (1) where the will is executed; (2) where the testator is domiciled at the time of the will's execution; (3) where the	REPORTER'S COMMENTS Section 62-2-505 specifies the extraordinary requirements, alternative to the usual requirements of Section 62-2-502 of this Code, for the valid formal execution of a will: a writing executed in compliance with the law applicable at the time of the will's execution (not that at the time of the testator's date of death), of the place (whether South Carolina or elsewhere): (1) where the will is executed; (2) where the testator is domiciled at the time of the will's execution; or (3) where

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testator is domiciled at the time of his death. The policy of Section 62-2-505, the effectuation of the testator's intention to duly execute his will in accordance with the law as he may understand it at the date of the will's execution, is furthered by the definition of the applicable law for purposes of Section 62-2-505 as that at the time of execution and as that of any of several different mentioned places. The wills of all decedents, domiciliary or otherwise, are covered by this section and may benefit thereby. One further alternative to this Code's provisions for valid in-state execution under Section 62-2-502 and valid out-state execution under Section 62-2-505 exists in its provisions for probate in South Carolina of a will already validly probated out-state; see Sections 62-3-303(c) and (d) and 62-3-408.	the testator is domiciled at the time of his death. The policy of Section 62-2-505, the effectuation of the testator's intention to duly execute his will in accordance with the law as he may understand it at the date of the will's execution is furthered by the definition of the applicable law for purposes of Section 62-2-505 as that at the time of execution and as that of any of several different mentioned places. The wills of all decedents, domiciliary or otherwise, are covered by this section and may benefit thereby. One further alternative to this Code's provisions for valid in-state execution under Section 62-2-502 and valid out-state execution under Section 62-2-505 exists in its provisions for probate in South Carolina of a will already validly probated out-state; see Sections 62-3-303(c) and (d) and 62-3-408.
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.	**SECTION 62-2-506.** (a) A will or any part thereof is revoked: (1) by executing a subsequent will ~~which~~ that revokes the ~~prior~~ previous 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~~ the testator's presence and by ~~his~~ the testator's direction. (b) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will. (1) The testator is presumed to have intended a subsequent will to replace rather than to supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked and only the subsequent will is operative on the testator's death. (2) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will and each will is fully operative on the testator's death to the extent they are not inconsistent.

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REPORTER'S COMMENTS Section 62-2-506 specifies the broad requirements for the valid intentional revocation of a will and of any part of a will: either (1) a subsequent will, defined in Section 62-1-201(48) of this Code, acting expressly or by implication on the will being revoked, or (2) a physical act affecting the will being revoked. The elaborate body of case law developed in the application of former Section 21-7-210 will continue to supply guidance in the application of Section 62-2-506. See C. Karesh, Wills 50-54 (1977). That case law stressed the necessity to meet the statute's requirements in order to effect a revocation, Madden v. Madden, 237 S.C. 629, 118 S.E.2d 443 (1961); distinguished intended revocations from the accidental inclusion of express language of revocation in subsequent wills, Owens v. Fahnestock, 110 S.C. 130, 96 S.E. 557 (1918), and the accidental destruction of wills, such accidents involving no revocation in the eyes of the law unless, perhaps, the accident was later confirmed as an intended revocation, Davis v. Davis, 214 S.C. 247, 52 S.E.2d 192 (1949). It distinguished unmistaken, unconditional revocations from cases of dependent relative revocation, i.e., mistaken revocations, not effective as revocations at law, Pringle v. McPherson's Executors, 4 S.C.L. 279 (2 Brev.) (1809), Johnson v. Brailsford, supra, Charleston Library Society v. C. & S. Nat. Bank, 200 S.C. 96, 20 S.E.2d 623 (1942), Stevens v. Royalls, 223 S.C. 510, 77 S.E.2d 198 (1953). It allowed partial revocations by either one of the two broad methods of revocation, Brown v. Brown, 91 S.C. 101, 74 S.E. 135 (1912). It gave effect to revocations by implication from the inconsistency between the provisions of the will being revoked and the subsequent will and also determined whether any such inconsistency existed, Starratt v. Morse, 332 F. Supp. 1038 (D.S.C. 1971) and Werber v. Moses, 117 S.C. 157, 108 S.E. 396 (1921). It governed revocations by physical act, including those accomplished "by another person in his (the testator's) presence and by his direction," Means v. Moore, 16 S.C.L. 314 (Harp. L.) (1824), and those rebuttably presumed to have occurred in cases of mutilated wills, Johnson v. Brailsford, supra, and in cases of missing wills, Lowe v. Fickling, 207 S.C. 442, 36 S.E.2d 293 (1945).	REPORTER'S COMMENTS Section 62-2-506 specifies the broad requirements for the valid intentional revocation of a will and of any part of a will: either (1) a subsequent will, defined in Section 62-1-201(52) of this Code, acting expressly or by implication on the will being revoked, or (2) a physical act affecting the will being revoked. The elaborate body of case law developed in the application of former Section 21-7-210 will continue to supply guidance in the application of Section 62-2-506. S. Alan Medlin, The Law of Wills and Trusts (S.C. Bar 2002) Sections 310, 310.1. That case law stressed the necessity to meet the statute's requirements in order to effect a revocation, Madden v. Madden, 237 S.C. 629, 118 S.E.2d 443 (1961); distinguished intended revocations from the accidental inclusion of express language of revocation in subsequent wills, Owens v. Fahnestock, 110 S.C. 130, 96 S.E. 557 (1918), and the accidental destruction of wills, such accidents involving no revocation in the eyes of the law unless, perhaps, the accident was later confirmed as an intended revocation, Davis v. Davis, 214 S.C. 247, 52 S.E.2d 192 (1949). It distinguished unmistaken, unconditional revocations from cases of dependent relative revocation, i.e., mistaken revocations, not effective as revocations at law, Pringle v. McPherson's Executors, 4 S.C.L. 279 (2 Brev.) (1809), Johnson v. Brailsford, 2 Nott and McC. 272 (S.C. 1820) Charleston Library Society v. C. & S. Nat. Bank, 200 S.C. 96, 20 S.E.2d 623 (1942), Stevens v. Royalls, 223 S.C. 510, 77 S.E.2d 198 (1953). It allowed partial revocations by either one of the two broad methods of revocation, Brown v. Brown, 91 S.C. 101, 74 S.E. 135 (1912). It gave effect to revocations by implication from the inconsistency between the provisions of the will being revoked and the subsequent will and also determined whether any such inconsistency existed, Starratt v. Morse, 332 F. Supp. 1038 (D.S.C. 1971) and Werber v. Moses, 117 S.C. 157, 108 S.E. 396 (1921). It governed revocations by physical act, including those accomplished 'by another person in his (the testator's) presence and by his direction,' Means v. Moore, 16 S.C.L. 314 (Harp. L.) (1824), and those rebuttably presumed to have occurred in cases of mutilated wills, Johnson v. Brailsford, supra, and in cases of missing wills, Lowe v. Fickling, 207 S.C. 442, 36 S.E.2d 293 (1945).
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	**SECTION 62-2-507.** ~~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~~

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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.	~~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.~~ (a) In this section: (1) 'Disposition or appointment of property' includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument. (2) 'Divorce or annulment' means any divorce or annulment or declaration of invalidity of a marriage or other event that would exclude the spouse as a surviving spouse in accordance with Section 62-2-802. It also includes a court order purporting to terminate all marital property rights or confirming equitable distribution between spouses unless they are living together as husband and wife at the time of the decedent's death. A decree of separate maintenance that does not terminate the status of husband and wife is not a divorce for purposes of this section. (3) 'Divorced individual' includes an individual whose marriage has been annulled. (4) 'Governing instrument' means an instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse including, but not limited to wills, revocable inter vivos trusts, powers of attorney, life insurance beneficiary designations, annuity beneficiary designations, retirement plan beneficiary designations and transfer on death accounts. (5) 'Revocable' with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the divorced individual's former spouse, whether or not the divorced individual was then empowered to designate the divorced individual in place of the divorced individual's former spouse and whether or not the divorced individual then had the capacity to exercise the power. (b) No change of circumstances other than those described in this section and in Section 62-2-803 effects a revocation. (c) Except as provided by the express terms of a governing instrument, a court order, or a

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	contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, the divorce or annulment of a marriage: (1) revokes any revocable: (i) disposition or appointment of property or beneficiary designation made by a divorced individual to the divorced individual's former spouse in a governing instrument; (ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse; or (iii) nomination in a governing instrument, nominating a divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, trustee, conservator, agent, attorney in fact or guardian; (2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship so that the share of the decedent passes as the decedent's property and the former spouse 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. (d) A severance under subsection (c)(2) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership. (e) Provisions of a governing instrument and nomination in a fiduciary or representative capacity that are revoked by this section are given effect as if the former spouse predeceased the decedent. (f) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment. (g)(1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section. (2) Written notice of the divorce, annulment, or remarriage under subsection (g)(1) must be mailed to the payor's or other third party's main office or home by registered or certified

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	mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court. (h)(1) A person who purchases property from a former spouse or any other person for value and without notice, or who receives from a former spouse or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section. (2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.
REPORTER'S COMMENTS Section 62-2-507 specifies the only circumstances effecting the revocation of a will, or parts thereof, by operation of law after the enactment of this Code: divorce, annulment, and an order terminating marital property rights or confirming equitable distribution between spouses, as defined in Section 62-2-802(b) and (c) of this Code, excluding decrees of separate maintenance which do not terminate the status of husband and wife. These circumstances work the revocation of only those portions of a will benefiting, empowering, or appointing the former spouse, thus treating the former spouse as having predeceased the testator, and they work thus only if the will fails to expressly provide otherwise and only as long as the testator and the former spouse remain unmarried to each other.	REPORTER'S COMMENTS The 2012 amendment expands this section to cover life insurance and retirement plan beneficiary designations, transfer on death accounts, and other revocable dispositions to the former spouse that the divorced individual established before the divorce or annulment. This section effectuates a decedent's presumed intent: without a contrary indication by the decedent, a former spouse will not receive any probate or nonprobate transfer as a result of the decedent's death.

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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. REPORTER'S COMMENTS Section 62-2-508 addresses the question whether the revival of a former and revoked will is intended and will be effected by the revocation of a subsequent and revoking will, either by physical act or by way of the execution of yet a third will revoking the subsequent will; the presumption is one against revival under Section 62-2-508. The presumption against revival is intended to be stiffened against rebuttal by the requirement of "clear, cogent, and convincing evidence" to rebut it.	**SECTION 62-2-508.** (a) If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act ~~The revocation by acts~~ under Section 62-2-506(a)(2) ~~of a~~ the previous will remains revoked unless it is revived. ~~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~~ The previous will is revived if it appears by clear~~, cogent,~~ and convincing evidence that the testator intended to revive or make effective the ~~former~~ previous will. (b) If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under Section 62-2-506(a)(2), a revoked part of the previous will is revived unless it appears by clear and convincing evidence that the testator did not intend the revoked part to take effect as executed. (c) ~~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~~ If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another, later will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the ~~third~~ later will that the testator intended the ~~former~~ previous will to take effect. REPORTER'S COMMENTS Section 62-2-508 addresses the question whether the revival of a former and revoked will is intended and will be effected by the revocation of a subsequent and revoking will, either by physical act or by way of the execution of yet a third will revoking the subsequent will. The 2012 amendment distinguishes between the revocation of a subsequent will that effects a complete revocation or a partial revocation of a previous will. There is a presumption against revival where the subsequent will wholly revokes the previous will. The presumption against revival is intended to be heightened by the requirement of 'clear and convincing evidence' to rebut it. There is a presumption in favor of revival (of the revoked part or parts of the previous will) where a subsequent will partially revoked the previous will. The justification is that where the

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	subsequent will only partially revoked the previous will, the subsequent will is only a codicil to the previous will and the testator should know that the previous will has continuing effect.
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. REPORTER'S COMMENTS Section 62-2-509 permits incorporation by reference in a will of a separate writing, in existence at the date of the execution of the will, if both the intent to incorporate and the identification of the writing appear in the language of the will. However, Section 62-2-509 does not require that the will describe the writing as existent and requires only that the writing be described "sufficiently to permit its identification". See Section 62-2-510 for more specific applications of the concept of the incorporation by reference in a will of written matter found outside the will. Compare Section 62-2-512 which allows a writing not sufficiently incorporated by reference into a will, as under Section 62-2-509, to affect the will's dispositions.	**SECTION 62-2-509.** 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. REPORTER'S COMMENTS Section 62-2-509 permits incorporation by reference in a will of a separate writing, in existence at the date of the execution of the will, if both the intent to incorporate and the identification of the writing appear in the language of the will. However, Section 62-2-509 does not require that the will describe the writing as existent and requires only that the writing be described 'sufficiently to permit its identification.' Compare Section 62-2-512 which allows a writing not sufficiently incorporated by reference into a will, as under Section 62-2-509, to affect the will's dispositions in certain cases.
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	**SECTION 62-2-510.** ~~(a)~~(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~~ to a trust is valid so long as: (1) the trust is identified in the testator's will and its terms are set forth in: (a) a written instrument (other than a will) executed before, ~~or~~ concurrently with, or after the execution of the testator's will but not later than the testator's death; or (b) in the valid last will of ~~a person~~ another individual 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.~~

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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.	(B) The trust is not required to have a trust corpus other than the expectancy of receiving the testator's devise. (C) 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. (D) 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 or after 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.~~ (E) Unless the testator's will provides otherwise, a revocation or termination of the trust before the death of the testator causes the devise to lapse. ~~(b)~~(F) 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)~~(G) 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

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(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.	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)~~(H) In the event no trustee makes proper claim to the proceeds payable as provided in subsections ~~(b)~~(F) and ~~(c)~~(G) 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)~~(I) Death benefits payable as provided in subsections ~~(b)~~(F) and ~~(c)~~(G) 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)~~(J) Such death benefits payable as provided in subsections ~~(b)~~(F) and ~~(c)~~(G) of this section so held in trust may be commingled with any other assets which may properly come into such trust.
REPORTER'S COMMENTS Section 62-2-510(a) makes use of parentheses in its first sentence, in order to clarify the intended effect of the statute, i.e., the allowance of pourovers to trusts established either (1) by a written instrument, so long as it is executed no later than the execution of the testator's will, or (2) by the will of someone other than the testator, so long as that person has predeceased the testator's death, and in either case regardless of the existence, size, or character of the corpus of the trust. See Section 62-2-509 for the more general application of the concept of incorporation by reference.	REPORTER'S COMMENTS This section allows a receptacle trust to be executed after the execution of the testator's will, and makes clear that the trust does not have to have a corpus other than the expectancy of receiving the testator's devise.
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.	**SECTION 62-2-511.** A will may dispose of property by reference to acts and events ~~which~~ that 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.
REPORTER'S COMMENTS Under Section 62-2-511, acts and events extraneous to a will are allowed to affect the will's	REPORTER'S COMMENTS Under Section 62-2-511, acts and events extraneous to a will are allowed to affect the will's

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dispositions if they have some significance apart from their effect upon the will's dispositions. The acts or events, including the execution or revocation of another person's will, might occur either before or after the dates of either the execution of the will or the testator's death and yet be given such effect. Compare Section 62-2-512 which allows an act extraneous to a will to affect the will's dispositions albeit the act has no independent significance. **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. REPORTER'S COMMENTS Section 62-2-512 relaxes the normal application of the rules of incorporation by reference, Section 62-2-509, and of facts of independent significance, Section 62-2-511, all in favor of the special case of extraneous writings, either in the testator's handwriting or signed by the testator, referred to in the testator's will, and which dispose of certain items of tangible personal property. They are given effect, albeit they are neither required to be in existence at the date when the will is executed nor to have independent significance. They may be altered by the testator at any time.	dispositions if they have some significance apart from their effect upon the will's dispositions. The acts or events, including the execution or revocation of another person's will, might occur either before or after the dates of either the execution of the will or the testator's death and yet be given such effect. Compare Section 62-2-512 which in certain cases allows an act extraneous to a will to affect the will's dispositions although the act has no independent significance. **SECTION 62-2-512.** 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~~ the testator 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~~ that has no significance apart from its effect upon the dispositions made by the will. REPORTER'S COMMENTS Section 62-2-512 relaxes the normal application of the rules of incorporation by reference, Section 62-2-509, and of facts of independent significance, Section 62-2-511, all in favor of the special case of extraneous writings, either in the testator's handwriting or signed by the testator, referred to in the testator's will, and which dispose of certain items of tangible personal property. They are given effect, albeit they are neither required to be in existence at the date when the will is executed nor to have independent significance. They may be altered by the testator at any time. Black's Law Dictionary defines 'tangible personal property' as including coin collections; therefore, coin collections may be items disposed of in a tangible personal property memorandum. Vehicles and boats are also tangible personal property.
Article 2.Part 6. Construction	Article 2.Part 6.
SECTION 62-2-601. Rules of construction and intention.	**SECTION 62-2-601.**

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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.	(A) The intention of a testator as expressed in ~~his~~ the testator's will controls the legal effect of ~~his~~ the testator's dispositions. The rules of construction expressed in the succeeding sections of this part apply unless a contrary intention is indicated by the will. (B) Notwithstanding subsection (A), the court may reform the terms of the will, even if unambiguous, to conform the terms to the testator's intention if it is proved by clear and convincing evidence that the testator's intent and the terms of the will were affected by a mistake of fact or law, whether in expression or inducement.
REPORTER'S COMMENTS Section 62-2-601 states the first principle of the construction of wills, that the testator's intention as expressed in the will controls, a codification of South Carolina case law. See King v. S.C. Tax Comm., 253 S.C. 246, 173 S.E.2d 92 (1970). Only in the absence of expression in the will of the testator's intention do the rules of construction of this Part (6) control.	REPORTER'S COMMENTS Section 62-2-601 states the first principle of the construction of wills, that the testator's intention as expressed in the will controls, a codification of South Carolina case law. See King v. S.C. Tax Comm., 253 S.C. 246, 173 S.E.2d 92 (1970). Only in the absence of expression in the will of the testator's intention do the rules of construction of this Part (6) control. Subsection (B) tracks Uniform Probate Code Reformation to Correct Mistakes to give probate judges statutory authority to reform a will's terms when there is clear and convincing evidence of a mistake (for example, in husband/wife wills where the attorney mistakenly forgets to change the name of the devisee from wife to husband in wife's will). Additionally, subsection (B) mirrors Section 62-7-415 in the Trust Code.
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.	**SECTION 62-2-602.** A will is construed to pass all property which the testator owns at ~~his~~ the testator's death including property acquired after the execution of the will and all property acquired by the testator's estate after the testator's death.
REPORTER'S COMMENTS Section 62-2-602 establishes the general rule that an ambiguous will is construed to pass all property owned at the testator's date of death, if at all possible to do so. Thus is stated the South Carolina law's presumption against intestacy. See MacDonald v. Fagan, 118 S.C. 510, 111 S.E. 793 (1922). Property specifically described in the will presents no problem; it is property not specifically described which raises the question answered by this section's rule. Provisions referring generally to classes of property of the decedent, without specification of the items of such property, are construed to refer to all items within the scope of their general reference, whether the items were acquired before or after the execution of the will. However, items of property	REPORTER'S COMMENTS Section 62-2-602 establishes the general rule that an ambiguous will is construed to pass all property owned at the testator's date of death, if at all possible to do so. Thus is stated the South Carolina law's presumption against intestacy. See MacDonald v. Fagan, 118 S.C. 510, 111 S.E. 793 (1922). Property specifically described in the will presents no problem; it is property not specifically described which raises the question answered by this section's rule. Provisions referring generally to classes of property of the decedent, without specification of the items of such property, are construed to refer to all items within the scope of their general reference, whether the items were acquired before or after the execution of the will. However, items of property

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not within the scope of reference of any general provision contained in the will do not pass under that will; they pass in intestacy, regardless of when they were acquired by the testator. Cornelson v. Vance, 220 S.C. 47, 66 S.E.2d 421, 426 (1951). This section also expresses the particular rule that after-acquired property is to be treated the same as property owned at the execution of the will.	not within the scope of reference of any general provision contained in the will do not pass under that will; they pass in intestacy, regardless of when they were acquired by the testator. Cornelson v. Vance, 220 S.C. 47, 66 S.E.2d 421, 426 (1951). This section also expresses the particular rule that after-acquired property is to be treated the same as property owned at the execution of the will even if that property is acquired by the testor's estate after the testater's death.
SECTION 62-2-603. Anti-lapse; deceased devisee; class gifts.	**SECTION 62-2-603.**
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.	(A) Unless a contrary intent appears in the will, 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. (B) 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. (C) Words of survivorship in a devise to an individual 'if he survives me,' or to 'my surviving children,' are, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of subsections (A) and (B).
REPORTER'S COMMENTS The anti-lapse rule of Section 62-2-603 applies unless the decedent's will provides otherwise, Section 62-2-601, and unless lifetime gifts to a devisee satisfy his devise under Section 62-2-610. The rule preserves some devises which otherwise would be void or would lapse because of the failure of the devisees to survive to take the devise. The rule saves only devises to persons who are related to the testator as or through the testator's great-grandparents, whether they are individually named in the devise, or merely described by class terminology, and whether they predecease the will's execution or the testator's date of death or they are merely treated as predeceasing his death, as under the Uniform Simultaneous Death Act, Sections 62-1-501 et seq., or as under Section 62-2-801(c) respecting devisees who renounce their succession rights, or as under Section 62-2-803 respecting devisees who feloniously and intentionally kill their testators. Those of the devisee's issue, defined by Sections 62-1-201(21), (3), and (28) and 62-2-109, who survive the testator take the devise in place of the devisee; they	REPORTER'S COMMENTS The anti-lapse rule of Section 62-2-603 applies unless the decedent's will provides otherwise and unless lifetime gifts to a devisee satisfy his devise under Section 62-2-610. The rule preserves some devises which otherwise would be void or would lapse because of the failure of the devisees to survive to take the devise. The rule saves only devises to persons who are related to the testator as or through the testator's great-grandparents, whether they are individually named in the devise, or merely described by class terminology, and whether they predecease the will's execution or the testator's date of death or they are merely treated as predeceasing his death, as under the Uniform Simultaneous Death Act, Sections 62-1-501 et seq., or as under Section 62-2-801 respecting devisees who renounce their succession rights, or as under Section 62-2-803 respecting devisees who feloniously and intentionally kill their testators. Those of the devisee's issue, defined by Section 62-1-201(24) who survive the testator take the devise in place of the devisee; they take among themselves per capita with per capita

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take among themselves per capita with per capita representation, as in intestate succession under Section 62-2-106 (see Reporter's Comments to Sections 62-2-106 and 62-2-103(1)). Section 62-2-603 unifies in one anti-lapse rule the simplified and expanded protection of those related to the testator as or through his great-grandparents and it also clarifies and expands the coverage of the anti-lapse rule, applying it to class gifts as well as to void devises.	representation, as in intestate succession under Section 62-2-106 (see Reporter's Comments to Sections 62-2-106 and 62-2-103(1)). Section 62-2-603 unifies in one anti-lapse rule the simplified and expanded protection of those related to the testator as or through his great-grandparents and it also clarifies and expands the coverage of the anti-lapse rule, applying it to class gifts as well as to void devises. The 2012 amendment added a presumption that words of survivorship are sufficient indication that the testator does not intend the antilapse section to apply.
SECTION 62-2-604. Failure of testamentary provision.	**SECTION 62-2-604.**
(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.	~~(a)~~(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)~~(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 that 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.
REPORTER'S COMMENTS The pro-residuary anti-failure rule of Section 62-2-604 applies to a failed devise unless the decedent's will provides otherwise, Section 62-2-601, as by substituting other takers for the failed devise, and unless the anti-lapse rule of Section 62-2-603 applies to preserve the otherwise failed devise. The rule preserves from intestacy devises failing for any reason, e.g., because of the indefiniteness of the devise, illegality, a violation of the Rule Against Perpetuities, incapacity of the devisee, or the failure of the devisee to survive to take the devise, including treatment of such devisee as being predeceased, as under the Uniform Simultaneous Death Act, Sections 62-1-501 et seq., and under Sections 62-2-801(c) and 62-2-803. The rule passes the failed devise to such of the residuary devisees whose devises do not fail, if any, who take proportionately in place of the devisee with respect to whom the devise failed. The rule of Section 62-2-604 applies whether the failed devise is pre-residuary, subsection (a), or residuary, subsection (b).	REPORTER'S COMMENTS The pro-residuary anti-failure rule of Section 62-2-604 applies to a failed devise unless the decedent's will provides otherwise, Section 62-2-601, as by substituting other takers for the failed devise, and unless the anti-lapse rule of Section 62-2-603 applies to preserve the otherwise failed devise. The rule preserves from intestacy devises failing for any reason, e.g., because of the indefiniteness of the devise, illegality, a violation of any Rule Against Perpetuities, incapacity of the devisee, or the failure of the devisee to survive to take the devise, including treatment of such devisee as being predeceased, as under the Uniform Simultaneous Death Act, Sections 62-1-501 et seq., and under Sections 62-2-801 and 62-2-803. The rule passes the failed devise to such of the residuary devisees whose devises do not fail, if any, who take proportionately in place of the devisee with respect to whom the devise failed. The rule of Section 62-2-604 applies whether the failed devise is pre-residuary, subsection (A), or residuary, subsection (B).
SECTION 62-2-605. Change in securities; accessions; nonademption.	**SECTION 62-2-605.**
(a) If the testator intended a specific devise of certain securities rather than the equivalent value	~~(a)~~(A) If the testator intended a specific devise of certain securities rather than the equivalent

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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.	value thereof, the specific devisee is entitled only to: (1) as much of the devised securities as is a part of the testator's estate at the time of the testator's death; (2) any additional or other securities of the same ~~entity~~ organization owned by the testator by reason of action initiated by the ~~entity~~ organization or any successor, related or acquiring organization excluding any acquired by exercise of purchase options; (3) securities of another ~~entity~~ organization owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the ~~entity~~ organization or any successor, related or acquiring organization; (4) any additional securities of the ~~entity~~ organization owned by the testator as a result of a plan of reinvestment ~~if it is a regulated investment company~~ in the organization. ~~(b)~~(B) Distributions in cash declared prior to death with respect to a specifically devised security not provided for in subsection ~~(a)~~(A) are not part of the specific devise.
REPORTER'S COMMENTS Section 62-2-605 establishes the rule that a specific devise, i.e., not merely a devise of equivalent value, of securities, defined at Section 62-1-201(36), is construed to pass only certain related securities, owned by the testator at his death, and listed in Section 62-2-605(a), and not to pass any other related securities or distributions of record before the death of the testator not so listed, Section 62-2-605(b), unless the decedent's will provides otherwise, Section 62-2-601. For the generally applicable nonademption rule see Section 62-2-606. See the Revised Uniform Principal and Income Act, Section 62-7-908(A) concerning distributions of record after the death of testator. The specific devise carries out with it as much of the securities specifically referred to as remain owned by the testator at his death, Section 62-2-605(a)(1), codifying South Carolina case law. See Gist v. Craig, 142 S.C. 407, 141 S.E. 26 (1927) and Watson v. Watson, 231 S.C. 247, 95 S.E.2d 266 (1956) (identified specifically devised proceeds not adeemed). Also carried out with the specific devise are additional securities of both entities other than the entity issuing the specifically devised securities, owned by the testator as a result of merger or the like, Section 62-2-605(a)(3), and of the entity itself, Section 62-2-605(a)(2), in either case owned by the testator by reason of actions initiated by the entity, Sections 62-2-605(a)(2) and (a)(3), and not initiated by testator himself. Additional securities received by the testator in mergers, name changes, stock splits and stock dividends, and the like, more representing change in the form of ownership of the specifically devised securities than change in the substance of that which is owned, and none at the initiative of the testator, are here bulked with and carried	REPORTER'S COMMENTS Section 62-2-605 establishes the rule that a specific devise, i.e., not merely a devise of equivalent value, of securities, defined at Section 62-1-201(41), is construed to pass only certain related securities, owned by the testator at his death, and listed in Section 62-2-605(A), and not to pass any other related securities or distributions of record before the death of the testator not so listed, Section 62-2-605(B), unless the decedent's will provides otherwise, Section 62-2-601. For the generally applicable nonademption rule see Section 62-2-606. See Section 62-7-908(A) concerning distributions of record after the death of testator. The specific devise carries out with it as much of the securities specifically referred to as remain owned by the testator at his death, Section 62-2-605(A)(1), codifying South Carolina case law. See Gist v. Craig, 142 S.C. 407, 141 S.E. 26 (1927) and Watson v. Watson, 231 S.C. 247, 95 S.E.2d 266 (1956) (identified specifically devised proceeds not adeemed). Also carried out with the specific devise are additional securities of both entities other than the entity issuing the specifically devised securities, owned by the testator as a result of merger or the like, Section 62-2-605(A)(3), and of the entity itself, Section 62-2-605(A)(2), in either case owned by the testator by reason of actions initiated by the entity, Sections 62-2-605(A)(2) and (A)(3), and not initiated by testator himself. Additional securities received by the testator in mergers, name changes, stock splits and stock dividends, and the like, more representing change in the form of ownership of the specifically devised securities than change in the substance of that which is owned, and none at the initiative of the testator, are here bulked with and carried out with the specifically devised securities themselves, as is likely to be intended by the testator.

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out with the specifically devised securities themselves, as is likely to be intended by the normal testator. Not carried out with the specific devise are additional securities of the entity itself owned by the testator by reason of his exercise of purchase options, i.e., at the initiative of the testator, Section 62-2-605(a)(2), and thus not to be bulked with the specifically devised securities, the testator himself having failed to do so by the route, open to but not taken by him, of amending his will. This is consistent with South Carolina case law, Rogers v. Rogers, supra, notwithstanding the case of Rasor v. Rasor, 173 S.C. 365, 175 S.E. 545 (1934), a case not of a specific devise but rather of a devise of equivalent value of certain securities. However, there are carried out with the specifically devised securities of a regulated investment company, i.e., a mutual fund, any additional securities of that entity owned by the testator by reason of his engaging in a plan of reinvestment, Section 62-2-605(a)(4). These are owned also at the initiative of the testator, but are bulked with the specifically devised securities because the testator himself has practically done so by his assent to the plan of reinvestment. The rule of Section 62-2-605(b) that distributions not provided for in Section 62-2-605(a) are not carried out with the specifically devised securities is, as the residual rule in this Code's scheme, consistent with the general rule of South Carolina case law, Bailey v. Wagner, 21 S.C. Eq. 1, 8, 10 (2 Strob. Eq.) (1848) (proceeds of sale of adeemed specific bequest not carried out); Rogers v. Rogers, 67 S.C. 168, 45 S.E. 176 (1903), Pinson v. Pinsom, 150 S.C. 368, 148 S.E. 211 (1928), and Rikard v. Miller, 231 S.C. 98, 107, 97 S.E.2d 257 (1957) (identified proceeds of collection or sale of adeemed specific bequests not carried out); and Stanton v. David, 193 S.C. 108, 7 S.E.2d 852 (1940), and Taylor v. Goddard, 265 S.C. 327, 218 S.E.2d 246 (1975) (nor unidentified proceeds).	Not carried out with the specific devise are additional securities of the entity itself owned by the testator by reason of his exercise of purchase options, i.e., at the initiative of the testator, Section 62-2-605(A)(2), and thus not to be bulked with the specifically devised securities, the testator himself having failed to do so by the route, open to but not taken by him, of amending his will. This is consistent with South Carolina case law, Rogers v. Rogers, 67S.C. 168, 45 S.E. 176 (1903), notwithstanding the case of Rasor v. Rasor, 173 S.C. 365, 175 S.E. 545 (1934), a case not of a specific devise but rather of a devise of equivalent value of certain securities. However, there are carried out with the specifically devised securities of an organization any additional securities resulting from a plan of reinvestment in the organization. These are owned also at the initiative of the testator, but are bulked with the specifically devised securities because the testator himself has practically done so by his assent to the plan of reinvestment. The rule of Section 62-2-605(B) that distributions not provided for in Section 62-2-605(A) are not carried out with the specifically devised securities is, as the residual rule in this Code's scheme, consistent with the general rule of South Carolina case law, Bailey v. Wagner, 21 S.C. Eq. 1, 8, 10 (2 Strob. Eq.) (1848) (proceeds of sale of adeemed specific bequest not carried out); Rogers v. Rogers, supra, Pinson v. Pinsom, 150 S.C. 368, 148 S.E. 211 (1928), and Rikard v. Miller, 231 S.C. 98, 107, 97 S.E.2d 257 (1957) (identified proceeds of collection or sale of adeemed specific bequests not carried out); and Stanton v. David, 193 S.C. 108, 7 S.E.2d 852 (1940), and Taylor v. Goddard, 265 S.C. 327, 218 S.E.2d 246 (1975) (nor unidentified proceeds). The 2012 amendment substituted the word 'organization' for 'entity' because 'organization' is defined in the probate code at Section 62-1-201(30). The amendment also added 'successor, related, or acquiring organization' to contemplate multiple changes in title of securities between the testator's acquisition of the security and the testator's death. The amendment eliminated 'if it is a regulated investment company' from (A)(4). The amendment added the words 'in cash' to subsection (B) to clarify that distributions made in cash do not fall within subsection (A) while distributions of other securities do fall within subsection (A). Finally, the amendment added the word 'declared' to subsection (B) to clarify that the cash distributions declared before death do not pass as part of the devise regardless of whether they are paid before or after death.
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:	**SECTION 62-2-606.** (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 in

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(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).	the testator's estate at the testator's death and to: (1) any balance of the purchase price (together with any mortgage or other security interest) ~~owing from~~ owed by a purchaser to the testator at the testator's death by reason of sale of the property; (2) any amount of a condemnation award for the taking of the property unpaid at the testator's death; (3) any proceeds unpaid at the testator's death on fire or casualty insurance ~~on~~ or on other recovery for injury to the property; (4) any property owned by the testator at ~~his~~ death and acquired 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 or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, or ~~if~~ a condemnation award or insurance proceeds ~~are~~ or recovery for injury to the property is paid to a conservator ~~as a result of condemnation, fire, or casualty~~ or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, ~~or~~ the insurance proceeds, or the recovery. ~~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.~~ (c) The right of the specific devisee under ~~this~~ subsection (b) is reduced by the value of any right he has under subsection (a). (d) For purposes of references in subsection (b) to a conservator, subsection (b) does not apply if after the sale, mortgage, condemnation, casualty or recovery, it was adjudicated that the testator's disability ceased and the testator survived the adjudication for at least one year. (e) For purposes of references in subsection (b) to an agent acting within the authority of a durable power of attorney for an incapacitated principal, (i) 'incapacitated principal' means a principal who is an incapacitated person, (ii) no adjudication of incapacity before death is necessary, and (iii) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.
REPORTER'S COMMENTS Section 62-2-606 establishes the rule that a specific devise of any property, including securities also governed by Section 62-2-605, is construed to pass, not only as much of the specifically devised property as remains at testator's death, but also the proceeds of sale, subsection (a)(1), and condemnation, subsection (a)(2), of the property, and the proceeds of policies of insurance	REPORTER'S COMMENTS Section 62-2-606 establishes the rule that a specific devise of any property, including securities also governed by Section 62-2-605, is construed to pass, not only as much of the specifically devised property as remains at testator's death, but also the proceeds of sale, subsection (a)(1), and condemnation, subsection (a)(2), of the property, and the proceeds of policies of insurance

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against fire or casualty to the property, subsection (a)(3), but only if such proceeds are yet unpaid to the testator at the testator's death, Section 62-2-606(a), or if such proceeds have been paid to a conservator, defined at Section 62-1-201(6), of the testator during the testator's life, provided less than one year separates the death of the testator and a prior adjudication that his disability had ceased, Section 62-2-606(b). Further, a specific devise of a secured obligation passes the products of foreclosure, or settlement in lieu of foreclosure, of such security, Section 62-2-606(a)(4). Section 62-2-606 applies unless the decedent's will provides otherwise, Section 62-2-601.	against fire or casualty to the property, subsection (a)(3), but only if such proceeds are yet unpaid to the testator at the testator's death, Section 62-2-606(a), or if such proceeds have been paid to an agent acting within the authority of a durable power of attorney or to a conservator, defined at Section 62-1-201(6), of the testator during the testator's life, provided less than one year separates the death of the testator and a prior adjudication that his disability had ceased, Section 62-2-606(b). Further, a specific devise of a secured obligation passes the products of foreclosure, or settlement in lieu of foreclosure, of such security, Section 62-2-606(a)(4). Section 62-2-606 applies unless the decedent's will provides otherwise, Section 62-2-601. The 2012 amendment adds the provisions regarding an agent acting within the authority of a durable power of attorney
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. REPORTER'S COMMENTS Section 62-2-607 establishes a rule of construction that specific devises pass not exonerated of but subject to any related security interests, unless the decedent's will provides otherwise, Section 62-2-601. Realty passing intestate is entitled to exoneration of liens as against the residuary and general personal estate of a testator. See Section 62-3-814 empowering the personal representative to pay an encumbrance under some circumstances; the last sentence of that section makes it clear that such payment does not increase the right of the specific devisee. The present section governs the substantive rights of the devisee. For the rule as to exempt property, see Section 62-2-401.	**SECTION 62-2-607.** 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. REPORTER'S COMMENTS Section 62-2-607 establishes a rule of construction that specific devises pass not exonerated of but subject to any related security interests, unless the decedent's will provides otherwise, Section 62-2-601. See Section 62-3-814 empowering the personal representative to pay an encumbrance under some circumstances; the last sentence of that section makes it clear that such payment does not increase the right of the specific devisee. The present section governs the substantive rights of the devisee. For the rule as to exempt property, see Section 62-2-401.
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.	**SECTION 62-2-608.** 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.

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REPORTER'S COMMENTS Section 62-2-608 follows the common law rule of construction that, unless the decedent's will provides otherwise, Sections 62-2-601 and 62-2-608, general dispositive provisions in a will do not pass property subject to the testator's powers of appointment.	REPORTER'S COMMENTS Section 62-2-608 follows the common law rule of construction that, unless the decedent's will provides otherwise, Sections 62-2-601 and 62-2-608, general dispositive provisions in a will do not pass property subject to the testator's powers of appointment.
SECTION 62-2-609. Construction of generic terms to accord with relationships as defined for intestate succession.	**SECTION 62-2-609.**
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.	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.
REPORTER'S COMMENTS Section 62-2-609 establishes the meaning of terms of family relationship, as used in wills, as including the meaning which such terms have for purposes of intestate succession by certain persons under Part l of Article 2, unless the decedent's will provides otherwise, Section 62-2-601. Hence, references to "children", "issue", or "heirs", and the like, are read to include or exclude half blood and adopted persons and persons born out of wedlock according to the rules of Sections 62-2-103(3) and 62-2-107, half bloods, 62-2-109(1), adopted persons, 62-2-109(2), persons born out of wedlock, and 62-2-112, aliens, and 62-2-113, twice related persons, at least those who are otherwise implicated by mention in Section 62-2-609. Half Blood: Section 62-2-107 generally treats half bloods just as whole bloods in the event of intestacy; hence, Section 62-2-609 would generally treat them without discrimination in the construction of wills. But Sections 62-2-107 and 62-2-103(3) exclude half blood brothers and sisters and their issue from taking in intestacy in case whole blood brothers and sisters of the intestate decedent survive him. Accordingly, Section 62-2-609 would exclude half blood brothers and sisters from wills' references to "brothers and sisters" of the testator and would exclude them and their issue from references to "issue of the parents" of the testator, in case whole blood brothers or sisters survive as members of the class described. This results from the discrimination against half blood brothers and sisters built into the intestacy provisions of this Code. Adopted Persons:	REPORTER'S COMMENTS Section 62-2-609 establishes the meaning of terms of family relationship, as used in wills, as including the meaning which such terms have for purposes of intestate succession by certain persons under Part l of Article 2, unless the decedent's will provides otherwise, Section 62-2-601. Hence, references to 'children', 'issue', or 'heirs', and the like, are read to include or exclude half blood and adopted persons and persons born out of wedlock according to the rules of Sections 62-2-103(3) and 62-2-107, half bloods, 62-2-109(1), adopted persons, 62-2-109(2), persons born out of wedlock, 62-2-112, aliens, and 62-2-113, twice related persons, at least those who are otherwise implicated by mention in Section 62-2-609. Half Blood: Section 62-2-107 generally treats half bloods just as whole bloods in the event of intestacy; hence, Section 62-2-609 would generally treat them without discrimination in the construction of wills. Adopted Persons: Section 62-2-109(1) generally treats adopted persons as natural born members of their adoptive families in the event of intestacy, as would Section 62-2-609 generally treat them in the construction of wills. Persons Born Out of Wedlock: Section 62-2-109(2) treats persons born out of wedlock just as legitimate persons in the event of the intestacy of their mothers, as would Section 62-2-609 treat them in the construction of wills. Section 62-2-109 treats persons born out of wedlock just as legitimate persons in the event of the intestacy of their fathers, but only in cases of ceremonial marriage of the person's parents even

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Section 62-2-109(1) generally treats adopted persons as natural born members of their adoptive families in the event of intestacy, as would Section 62-2-609 generally treat them in the construction of wills. Persons Born Out of Wedlock: Section 62-2-109(2) treats persons born out of wedlock just as legitimate persons in the event of the intestacy of their mothers, as would Section 62-2-609 treat them in the construction of wills. Section 62-2-109 treats persons born out of wedlock just as legitimate persons in the event of the intestacy of their fathers, but only in cases of ceremonial marriage of the person's parents, Section 62-2-109(2)(i), or in cases of adjudication of the father's paternity, Section 62-2-109(2)(ii), and so would Section 62-2-609 treat them in the construction of wills but for its important additional proviso that the person born out of wedlock is treated as the child of the father only if the father himself openly and notoriously so treated him.	if the attempted marriage was void, Section 62-2-109(2)(i), or in cases of adjudication of the father's paternity, Section 62-2-109(2)(ii), and so would Section 62-2-609 treat them in the construction of wills but for its additional proviso that the person born out of wedlock is treated as the child of the father only if the father himself openly and notoriously so treated him.
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.	**SECTION 62-2-610.** (a) Property which a testator gave in ~~his~~ the testator's lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if: (i) the will provides for deduction of the lifetime gift;~~, or~~ (ii) the testator ~~declares~~ declared in a contemporaneous writing that the gift is to be deducted from the devise; or (iii) ~~is in satisfaction of the devise, or~~ the devisee ~~acknowledges~~ acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise. (b) 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~~ at the testator's death, whichever occurs first. (c) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying Sections 62-2-603 and 62-2-604, unless the testator's contemporaneous writing provides otherwise.
REPORTER'S COMMENTS Section 62-2-610 concerns the effect on testate succession of lifetime gifts made by the testator to persons who are also devisees under his will. The section establishes a rule of construction which charges such lifetime gifts, in satisfaction, against the will's devise, but only if either they are declared thus to be in satisfaction, either by the will or by the testator, contemporaneously in	REPORTER'S COMMENTS Section 62-2-610 concerns the effect on testate succession of lifetime gifts made by the testator to persons who are also devisees under his will. The section establishes a rule of construction which charges such lifetime gifts, in satisfaction, against the will's devise, but only if either they are declared thus to be in satisfaction, either by the will or by the testator, contemporaneously in

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writing, or they are thus acknowledged by the devisee, again in writing. (P)If the devisee predeceases the testator, but issue of the devisee survive as beneficiaries of the anti-lapse provision of this Code, Section 62-2-603, then Sections 62-2-610 and 62-2-603 read together charge the ancestor's lifetime gifts in satisfaction against the devise to the issue, again, however, only if the above-mentioned writing exists. Section 62-2-610 values the satisfaction at the earlier of the devisee's actual receipt of the gift or the testator's date of death, resulting in most cases in a valuation at the date of the gift rather than at the date of death. See Section 62-2-110 on advancements, for a rule analogous to the rule of satisfaction, but operative in the event of intestacy.	writing, or they are thus acknowledged by the devisee, again in writing. If the devisee predeceases the testator, but issue of the devisee survive as beneficiaries of the anti-lapse provision of this Code, Section 62-2-603, then Sections 62-2-610 and 62-2-603 read together charge the ancestor's lifetime gifts in satisfaction against the devise to the issue, again, however, only if the above-mentioned writing exists. Section 62-2-610 values the satisfaction at the earlier of the devisee's actual receipt of the gift or the testator's date of death, resulting in most cases in a valuation at the date of the gift rather than at the date of death. See Section 62-2-110 on advancements, for a rule analogous to the rule of satisfaction, but operative in the event of intestacy. The 2012 amendment added subsection (c) to provide that if a devisee fails to survive the testator and the devisee's descendants take under 62-2-603 and if this devise is reduced with respect to the devisee, it shall automatically be reduced with respect to the devisee's descendants. Consider Section 62-2-606 as it relates to ademption.
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.	**SECTION 62-2-611.** A devise of land is construed to pass an estate in fee simple, regardless of the absence of words of limitation in the devise.
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.	**SECTION 62-2-612.** 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.~~

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