

## Chapter 41.

### Estates

#### Article 1.

##### Survivorship Rights and Future Interests.

#### **§ 41-1. Fee tail converted into fee simple.**

Every person seized of an estate in tail shall be deemed to be seized of the same in fee simple. (1784, c. 204, s. 5; R.C., c. 43, s. 1; Code, s. 1325; Rev., s. 1578; C.S., s. 1734; 1995, c. 190, s. 1; c. 525, s. 1.)

**§ 41-2:** Repealed by Session Laws 2020-50, s. 2(d), effective June 30, 2020.

#### **§ 41-2.1. Right of survivorship in bank deposits created by written agreement.**

(a) A deposit account may be established with a banking institution in the names of two or more persons, payable to either or the survivor or survivors, with incidents as provided by subsection (b) of this section, when both or all parties have signed a written agreement, either on the signature card or by separate instrument, expressly providing for the right of survivorship.

(b) A deposit account established under subsection (a) of this section shall have the following incidents:

- (1) Either party to the agreement may add to or draw upon any part or all of the deposit account, and any withdrawal by or upon the order of either party shall be a complete discharge of the banking institution with respect to the sum withdrawn.
- (2) During the lifetime of both or all the parties, the deposit account shall be subject to their respective debts to the extent that each has contributed to the unwithdrawn account. In the event their respective contributions are not determined, the unwithdrawn fund shall be deemed owned by both or all equally.
- (3) Upon the death of either or any party to the agreement, the survivor, or survivors, become the sole owner, or owners, of the entire unwithdrawn deposit, subject to the following claims listed below in subdivisions a. through e. upon that portion of the unwithdrawn deposit which would belong to the deceased had the unwithdrawn deposit been divided equally between both or among all the joint tenants at the time of the death of the deceased:
  - a. The allowance of the year's allowance to the surviving spouse of the deceased;
  - b. The funeral expenses of the deceased;
  - c. The cost of administering the estate of the deceased;
  - d. The claims of the creditors of the deceased; and
  - e. Governmental rights.
- (4) Upon the death of one of the joint tenants provided herein the banking institution in which said joint deposit is held shall pay to the legal representative of the deceased, or to the clerk of the superior court if the amount is less than two thousand dollars (\$2,000), the portion of the unwithdrawn deposit made subject to the claims and expenses as provided in subdivision (3) above, and may pay the remainder to the surviving joint tenant or joint tenants. Said legal

representative shall hold the portion of said unwithdrawn deposit paid to him and not use the same for the payment of the claims and expenses as provided in subdivision (3) above unless and until all other personal assets of the estate have been exhausted, and shall then use so much thereof as may be necessary to pay said claims and expenses. Any part of said unwithdrawn deposit not used for the payment of said claims and expenses shall, upon the settlement of the estate, be paid to the surviving joint tenant or tenants.

(c) This section shall be subject to the provisions of law applicable to transfers in fraud of creditors.

(d) This section shall not be deemed exclusive; deposit accounts not conforming to this section, and other property jointly owned, shall be governed by other applicable provisions of the law.

(e) As used in this section:

- (1) "Banking institution" includes commercial banks, industrial banks, building and loan associations, savings and loan associations, and credit unions.
- (2) "Deposit account" includes both time and demand deposits in commercial banks and industrial banks, installment shares, optional shares and fully paid share certificates in building and loan associations and savings and loan associations, and deposits and shares in credit unions.
- (3) "Unwithdrawn deposit" shall be the amount in the deposit account held by the banking institution at the time of the death of the joint tenant; provided, however, that the banking institution shall not be held responsible for any amount properly paid out of said account prior to notice of such death.

(f) This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes.

(g) A deposit account under subsection (a) of this section may be established by a written agreement in substantially the following form:

"We, the undersigned, hereby agree that all sums deposited at any time, including sums deposited prior to this date, in the \_\_\_\_\_ (name of institution) in the joint account of the undersigned, shall be held by us as co-owners with the right of survivorship, regardless of whose funds are deposited in said account and regardless of who deposits the funds in said account. Either or any of us shall have the right to draw upon said account, without limit, and in case of the death of either or any of us the survivor or survivors shall be the sole owner or owners of the entire account. This agreement is governed by the provisions of § 41-2.1 of the General Statutes of North Carolina.

Witness our hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (Seal)"

(1959, c. 404; 1963, c. 779; 1969, c. 863; 1973, c. 840; 1975, c. 19, s. 14; 1977, c. 671, ss. 1, 2; 1998-69, s. 11; 1999-337, s. 9; 1999-456, s. 59.)

**§ 41-2.2. Joint ownership of securities.**

(a) In addition to other forms of ownership, securities may be owned by any parties as joint tenants with rights of survivorship, and not as tenants in common, in the manner provided in this section.

(b) (1) A joint tenancy in securities as provided by this section shall exist when such securities indicate that they are owned with the right of survivorship, or otherwise clearly indicate an intention that upon the death of either party the interest of the decedent shall pass to the surviving party.

(2) Such a joint tenancy may also exist when a broker or custodian holds the securities for the joint tenants and by book entry or otherwise indicates (i) that the securities are owned with the right of survivorship, or (ii) otherwise clearly indicates that upon the death of either party, the interest of the decedent shall pass to the surviving party. Money in the hands of such broker or custodian derived from the sale of, or held for the purpose of, such securities shall be treated in the same manner as such securities.

(c) Upon the death of a joint tenant his interest shall pass to the surviving joint tenant. The interest of the deceased joint tenant, even though it has passed to the surviving joint tenant, remains liable for the debts of the decedent in the same manner as the personal property included in his estate, and recovery thereof shall be made from the surviving joint tenant when the decedent's estate is insufficient to satisfy such debts.

(d) This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes.

(e) As used in this section, "securities" has the same meaning as in G.S. 41-40(9) and includes "security account" as that term is defined in G.S. 41-40(10). (1967, c. 864, s. 1; 1969, c. 1115, s. 2; 1989 (Reg. Sess., 1990), c. 891, s. 2; 1998-69, s. 12; 1999-337, s. 10; 2005-411, s. 3.)

**§§ 41-2.3 through 41-2.4. Reserved for future codification purposes.**

**§ 41-2.5:** Recodified as G.S. 41-56(d) by Session Laws 2020-50, s. 1(b), effective June 30, 2020.

**§ 41-3. Survivorship among trustees.**

In all cases where only a naked trust not coupled with a beneficial interest has been created or exists, or shall be created, and the conveyance is to two or more trustees, the right to perform the trust and make estates under the same shall be exercised by any one of such trustees, in the event of the death of his cotrustee or cotrustees or the refusal or inability of the cotrustee or cotrustees to perform the trust; and in cases of trusts herein named the trustees shall hold as joint tenants, and in all respects as joint tenants held before the year 1784. (1885, c. 327, s. 1; Rev., s. 1580; C.S., s. 1736.)

**§ 41-4. Limitations on failure of issue.**

Every contingent limitation in any deed or will, made to depend upon the dying of any person without heir or heirs of the body, or without issue or issues of the body, or without children, or offspring, or descendant, or other relative, shall be held and interpreted a limitation to take effect when such person dies not having such heir, or issue, or child, or offspring, or descendant, or other relative (as the case may be) living at the time of his death, or born to him within 10 lunar months thereafter, unless the intention of such limitation be otherwise, and expressly and plainly declared in the face of the deed or will creating it: Provided, that the rule of construction contained in this

section shall not extend to any deed or will made and executed before the fifteenth of January, 1828. (1827, c. 7; R.C., c. 43, s. 3; Code, s. 1327; Rev., s. 1581; C.S., s. 1737.)

**§ 41-5. Unborn infant may take by deed or writing.**

An infant unborn, but in esse, shall be deemed a person capable of taking by deed or other writing any estate whatever in the same manner as if he were born. (R.C., c. 43, s. 4; Code, s. 1328; Rev., s. 1582; C.S., s. 1738.)

**§ 41-6. "Heirs" construed to be "children" in certain limitations.**

A limitation by deed, will, or other writing, to the heirs of a living person, shall be construed to be to the children of such person, unless a contrary intention appear by the deed or will. (R.C., c. 43, s. 5; Code, s. 1329; Rev., s. 1583; C.S., s. 1739.)

**§ 41-6.1. Meaning of "next of kin."**

A limitation by deed, will, or other writing, to the "next of kin" of any person shall be construed to be to those persons who would take under the law of intestate succession, unless a contrary intention appears by the instrument. (1967, c. 948.)

**§ 41-6.2. Doctrine of worthier title abolished.**

(a) The law of this State does not include: (i) the common-law rule of worthier title that a grantor or testator cannot convey or devise an interest to the grantor's or testator's own heirs, or (ii) a presumption or rule of interpretation that a grantor or testator does not intend, by a grant or devise to the grantor's or testator's own heirs or next of kin, to transfer an interest to them. The meaning of a grant or devise of a legal or equitable interest to a grantor's or testator's own heirs or next of kin, however designated, shall be determined by the general rules applicable to the interpretation of grants or wills.

(b) Subdivision (a)(i) of this section shall apply to all revocable trusts in existence as of February 26, 1979 and to all instruments, including revocable trusts, becoming effective after February 26, 1979, and subdivision (a)(ii) of this section shall apply to all instruments in existence as of February 26, 1979 and to all instruments becoming effective after February 26, 1979. If the application of this section to any instrument is held invalid, its application to other instruments to which it may validly be applied shall not be affected thereby. (1979, c. 88, s. 1; 2011-284, s. 49.)

**§ 41-6.3. Rule in Shelley's case abolished.**

(a) The rule of property known as the rule in Shelley's case is abolished.

(b) This section shall become effective October 1, 1987, and applies to transfers of property that take effect on or after that date. (1987, c. 706, s. 1.)

**§ 41-6.4. Rule in Dumpor's Case abolished.**

(a) The rule of property known as the Rule in Dumpor's Case is abolished.

(b) This section shall become effective October 1, 2012, and applies to transfers of property that take effect on or after that date. (2012-163, s. 1.)

**§ 41-6.5. Common-law rule against perpetuities abolished.**

(a) The rule of the common law known as the rule against perpetuities is abolished.

(b) Article 2 of this Chapter sets out the Uniform Statutory Rule Against Perpetuities.

(c) This section applies to a property interest or a power of appointment created on or after October 1, 1995. This section clarifies the intent of the General Assembly to abolish the common-law rule against perpetuities when it enacted Chapter 190 of the 1995 Session Laws, which enacted the Uniform Statutory Rule Against Perpetuities. (2022-64, s. 3(a).)

**§ 41-7. Possession transferred to use in certain conveyances.**

By deed of bargain and sale, or by deeds of lease and release, or by covenant to stand seized to use, or deed operating by way of covenant to stand seized to use, or otherwise, by any manner or means whatsoever it be, the possession of the bargainor, releasor, or covenantor shall be deemed to be transferred to the bargainee, releasee, or person entitled to the use, for the estate or interest which such person shall have in the use, as perfectly as if the bargainee, releasee or person entitled to the use had been enfeoffed at common law with livery of seizin of the land intended to be conveyed by such deed or covenant. (27 Hen. VIII, c. 10; R.C., c. 43, s. 6; Code, s. 1330; Rev., s. 1584; C.S., s. 1740.)

**§ 41-8. Collateral warranties abolished; warranties by life tenants deemed covenants.**

All collateral warranties are abolished; and all warranties made by any tenant for life of lands, tenements or hereditaments, the same descending or coming to any person in reversion or remainder, shall be void; and all such warranties, as aforesaid, shall be deemed covenants only, and bind the covenantor in like manner as other obligations. (4 Anne, c. 16, s. 21; 1852, c. 16; R.C., c. 43, s. 10; Code, s. 1334; Rev., s. 1587; C.S., s. 1741.)

**§ 41-9: Repealed by Session Laws 1979, c. 180, s. 2.**

**§ 41-10. Titles quieted.**

An action may be brought by any person against another who claims an estate or interest in real property adverse to him for the purpose of determining such adverse claims; and by any man or woman against his or her wife or husband or alleged wife or husband who have not lived together as man and wife within the two years preceding, and who at the death of such plaintiff might have or claim to have an interest in his or her estate, and a decree for the plaintiff shall debar all claims of the defendant in the property of the plaintiff then owned or afterwards acquired: Provided, that no such relief shall be granted against such husband or wife or alleged wife or husband, except in case the summons in said action is personally served on such defendant.

If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff cannot recover costs. In any case in which judgment has been or shall be docketed, whether such judgment is in favor of or against the person bringing such action, or is claimed by him, or affects real estate claimed by him, or whether such judgment is in favor of or against the person against whom such action may be brought, or is claimed by him, or affects real estate claimed by him, the lien of said judgment shall be such claim of an estate or interest in real estate as is contemplated by this section. (1893, c. 6; 1903, c. 763; Rev., s. 1589; 1907, c. 888; C.S., s. 1743.)

**§ 41-10.1. Trying title to land where State claims interest.**

Whenever the State of North Carolina or any agency or department thereof asserts a claim of title to land which has not been taken by condemnation and any individual, firm or corporation likewise asserts a claim of title to the said land, such individual, firm or corporation may bring an

action in the superior court of the county in which the land lies against the State or such agency or department thereof for the purpose of determining such adverse claims. Provided, however, that this section shall not apply to lands which have been condemned or taken for use as roads or for public buildings. (1957, c. 514.)

**§ 41-11. Sale, lease or mortgage in case of remainders.**

In all cases where there is a vested interest in real estate, and a contingent remainder over to persons who are not in being, or when the contingency has not yet happened which will determine who the remaindermen are, there may be a sale, lease or mortgage of the property by a special proceeding in the superior court, which proceeding shall be conducted in the manner pointed out in this section. Said proceeding may be commenced by summons by any person having a vested interest in the land, and all persons in esse who are interested in said land shall be made parties defendant and served with summons in the way and manner now provided by law for the service of summons in other special proceedings, as provided by Rule 4 of the Rules of Civil Procedure, and service of summons upon nonresidents, or persons whose names and residences are unknown, shall be by publication as now required by law or such service in lieu of publication as now provided by law. In cases where the remainder will or may go to minors, or persons under other disabilities, or to persons not in being, or whose names and residences are not known, or who may in any contingency become interested in said land, but because of such contingency cannot be ascertained, the clerk of the superior court shall, after due inquiry of persons who are in no way interested in or connected with such proceeding, designate and appoint some discreet person as guardian ad litem, to represent such remainderman, upon whom summons shall be served as provided by law for other guardians ad litem, and it shall be the duty of such guardian ad litem to defend such actions, and when counsel is needed to represent him, to make this known to the clerk, who shall by an order give instructions as to the employment of counsel and the payment of fees.

The court shall, if the interest of all parties require or would be materially enhanced by it, order a sale of such property or any part thereof for reinvestment, either in purchasing or in improving real estate, less expense allowed by the court for the proceeding and sale, and such newly acquired or improved real estate shall be held upon the same contingencies and in like manner as was the property ordered to be sold. The court may authorize the loaning of such money subject to its approval until such time when it can be reinvested in real estate. And after the sale of such property in all proceedings hereunder, where there is a life estate, in lieu of said interest or investment of proceeds to which the life tenant would be entitled to, or to the use of, the court may in its discretion order the value of said life tenant's share during the probable life of such life tenant, to be ascertained as now provided by law, and paid out of the proceeds of such sale absolutely, and the remainder of such proceeds be reinvested as herein provided. Any person or persons owning a life estate in lands which are unproductive and from which the income is insufficient to pay the taxes on and reasonable upkeep of said lands shall be entitled to maintain an action, without the joinder of any of the remaindermen or reversioners as parties plaintiff, for the sale of said property for the purpose of obtaining funds for improving other nonproductive and unimproved real estate so as to make the same profit-bearing, all to be done under order of the court, or reinvestment of the funds under the provisions of this section, but in every such action when the rights of minors or other persons not sui juris are involved, a competent and disinterested attorney shall be appointed by the court to file answer and represent their interests. The provisions of the preceding sentence, being remedial, shall apply to cases where any title in such lands shall have been acquired before, as well as after, its passage – March 7, 1927.

The clerk of the superior court is authorized to make all orders for the sale, lease or mortgage of property under this section, and for the reinvestment or securing and handling of the proceeds of such sales, but no sale under this section shall be held or mortgage given until the same has been approved by the resident judge of the district, or the judge holding the courts of the district at the time said order of sale is made. The approval by the resident judge of the district may be made by him either during a session of court or at chambers. All orders of approval under said statute by judges resident in the district heretofore made either during a session of court or at chambers are hereby ratified and validated.

The court may authorize the temporary reinvestment, pending final investment in real estate, of funds derived from such sale in any direct obligation of the United States of America or any indirect obligation guaranteed both as to principal and interest or bonds of the State of North Carolina issued since the year 1972; but in the event of such reinvestment, the commissioners, trustees or other officers appointed by the court to hold such funds shall hold the bonds in their possession and shall pay to the life tenant and owner of the vested interest in the lands sold only the interest accruing on the bonds, and the principal of the bonds shall be held subject to final reinvestment and to such expense only as is provided in this section. Temporary reinvestments, as aforesaid, in any direct obligation of the United States of America or any indirect obligation guaranteed both as to principal and interest or State bonds heretofore made with the approval of the court of all or a part of the funds derived from such sales are ratified and declared valid.

The court shall, if the interest of the parties require it and would be materially enhanced by it, order such property mortgaged for such term and on such condition as to the court seems proper and to the best interest of the interested parties. The proceeds derived from the mortgage shall be used for the purpose of adding improvements to the property or to remove existing liens on the property as the court may direct, but for no other purpose. The mortgagees shall not be held responsible for determining the validity of the liens, debts and expenses where the court directs such liens, debts and expenses to be paid. In all cases of mortgages under this section the court shall authorize and direct the guardian representing the interest of minors and the guardian ad litem representing the interest of those persons unknown or not in being to join in the mortgage for the purpose of conveying the interest of such person or persons. In all cases of mortgages under this section the owner of the vested interest or his or her legal representative shall within six months from the date of the mortgage file with the court an itemized statement showing how the money derived from the said mortgage has been expended, and shall exhibit to the court receipts for said money. Said report shall be audited in the same manner as provided for the auditing of guardian's accounts. The owner of the vested interest or his or her legal representative shall collect the rents and income from the property mortgaged and apply the proceeds first to taxes and discharge of interest on the mortgage and the annual curtailment as provided thereby, or if said person uses or occupies said premises he or she shall pay the said taxes, interest and curtailments and said party shall enter into a bond to be approved by the court for the faithful performance of the duties hereby imposed, and such person shall annually file with the court a report and receipts showing that taxes, interest and the curtailment as provided by the mortgage have been paid.

The mortgagee shall not be held responsible for the application of the funds secured or derived from the mortgage. The word "mortgage" whenever used herein shall be construed to include deeds in trust. (1903, c. 99; 1905, c. 548; Rev., s. 1590; 1907, cc. 956, 980; 1919, c. 17; C.S., s. 1744; Ex. Sess. 1921, c. 88; 1923, c. 69; 1925, c. 281; 1927, cc. 124, 186; 1933, c. 123; 1935, c. 299; 1941, c. 328; 1943, cc. 198, 729; 1947, c. 377; 1951, c. 96; 1967, c. 954, s. 3; 1971, c. 528, s. 39.)

**§ 41-11.1. Sale, lease or mortgage of property held by a "class," where membership may be increased by persons not in esse.**

(a) Wherever there is a gift, devise, transfer or conveyance of a vested estate or interest in real or personal property, or both, to persons described as a class, and at the effective date thereof, one or more members of the class are in esse, and there is a possibility in law that the membership of the class may later be increased by one or more members not then in esse, a special proceeding may be instituted in the superior court for the sale, lease or mortgage of such real or personal property, or both, as provided in this section.

(b) All petitions filed under this section wherein an order is sought for the sale, lease or mortgage of real property, or of both real and personal property, shall be filed in the office of the clerk of the superior court of the county in which all or any part of the real property is situated. If the order sought is for sale, lease or mortgage of personal property, the petition may be filed in the office of the clerk of the superior court of the county in which any or all of such personal estate is situated.

(c) All members of the class in esse shall be parties to the proceeding, and where any of such members are under legal disability, their duly appointed general guardians or their guardians ad litem shall be made parties. The clerk of the superior court shall appoint a guardian ad litem to represent the interests of the possible members of the class not in esse, and such guardian ad litem shall be a party to the proceeding.

(d) Upon a finding by the clerk of the superior court that the interests of all members of the class, both those in esse and those not in esse, would be materially promoted by a sale, lease or mortgage of any such property, he shall enter an order that the sale, lease or mortgage be made, and shall appoint a trustee to make such sale, lease or mortgage, in such manner and on such terms as the clerk may find to be most advantageous to the interests of the members of the class, both those in esse and those not in esse; but no sale, lease or mortgage shall be made, or shall be valid, until approved and confirmed by the resident judge of the district, or the judge holding the courts of the district. As a condition precedent to receiving the proceeds of the sale, lease or mortgage, the trustee shall be bonded in the same manner as a guardian for minors.

(e) In the event of a sale of any such property, the proceeds of sale shall be owned in the identical manner as the property was owned immediately prior to the sale; provided,

(1) The trustee appointed by the clerk as provided above may hold, manage, invest and reinvest said proceeds for the benefit of all members of the class, both those in esse and those not in esse, until the occurrence of the event which will finally determine the identity of all members of the class; all such investments and reinvestments shall be made in accordance with the laws of North Carolina relating to the investment of funds held by guardians or minors; and all the provisions of G.S. 36-4, relating to the reduction in bonds of guardians or trustees upon investment in certain registered securities and the deposit of the securities with the clerk of the superior court, shall be applicable to the trustee appointed hereunder;

(2) The clerk by appropriate order, in lieu of holding, managing, investing and reinvesting the proceeds of sale, may pay or authorize the trustee to pay the entire amount of such proceeds to the living members of the class as they may be then constituted or to their duly appointed guardians, or to pay the ratable portion or portions of such proceeds to one or more of such living members or to their guardians; provided that, where the class would be closed by the death



of the mother or mothers of the members of the class, said mother or mothers are living and have attained the age of 55, and upon the further condition that there be first filed with the clerk a bond conditioned upon the payment of the lawful share of any member of the class not then in esse, but who may thereafter come into being or otherwise become a member of the class, to such member or his guardian whenever he becomes a living member of the class. Such bond shall be payable to the State to the use of the additional members of the class and shall be either a cash bond or a premium bond executed by a surety company authorized to transact business in North Carolina. The penalty of such bond shall not be less than one and one fourth the amount of the proceeds of sale. Any bond filed hereunder shall be acknowledged before and approved by the clerk of the superior court.

(f) In the event the proceeds of sale shall be paid over to a trustee and invested by him as authorized above, the entire income actually received by the trustee from such investment shall be paid by said trustee periodically, and not less often than annually, in equal shares to the living members of the class as they shall be constituted at the time of each such payment, or to the duly appointed guardians of any such living members under legal disability.

(g) In the event the court orders a lease of the property, the proceeds from the lease shall be first used to defray the expenses, if any, of the upkeep and maintenance of the property, and the discharge of taxes, liens, charges and encumbrances thereon, and any remaining proceeds shall be paid over by the trustee in their entirety, not less often than annually, in equal shares to the living members of the class as they shall be constituted at the time of each such payment or to the duly appointed guardians of any such members under legal disability.

(h) Payments of income to the living members of the class as aforesaid shall constitute a full and final acquittance and disposition of the income so paid, it being the intent of this section that only the living members of the class (as they may be constituted at the time of each respective income payment) shall be entitled to the income which is the subject of the respective payment, and that possible members of the class not in esse shall not share in, or become entitled to the benefit of any income payment made prior to the time that such members are born and become living members of the class.

(i) In the event that there has been a sale of any of the property, and the proceeds of sale are being held, managed, invested and reinvested by a trustee as provided above, any member of the class who is of legal age and who is not otherwise under legal disability may sell, assign and transfer his entire right, title and interest (both as to principal and income) in the funds or investments so held by the trustee. Upon receiving written notice of such sale, assignment or transfer, the trustee shall recognize the purchaser, assignee and transferee as the lawful successor in all respects whatsoever to the right, title and interest (both as to principal and income) of the seller, assignor and transferor; but no such sale, transfer or assignment shall divest the trustee of his legal title in, or possession of, said funds or investments or (except as provided above) affect his administration of the trusts for which he was appointed.

(j) The court shall order a mortgage of the property only for one or more of the following purposes:

- (1) To provide funds for the costs and expenses of court incurred in carrying out any of the provisions of this section;
- (2) To provide funds for the necessary upkeep and maintenance of the property;
- (3) To make reasonable improvements to the property;

(4) To pay off taxes, other existing liens, charges and encumbrances on the property.

(k) The mortgagee shall not be held responsible for the application of the funds secured or derived from the mortgage. As used in this section, references to mortgages shall also apply to deeds of trust executed for loan security purposes.

(l) Every trustee appointed pursuant to the provisions of this section shall file with the clerk of the superior court an inventory and annual accounts in the same manner as is now provided by law with respect to guardians.

(m) The superior court shall allow commissions to the trustee for his time and trouble in the effectuation of a sale, lease or mortgage, and in the investment and management of the proceeds, in the same manner and under the same rules and restrictions as allowances are made to executors, administrators, and collectors.

(n) Provided, however, this section shall not be applicable where the instrument creating the gift, devise, transfer or conveyance specifically directs, by means of the creation of a trust or otherwise, the manner in which the property shall be used or disposed of, or contains specific limitations, conditions or restrictions as to the use, form, investment, leasing, mortgage, or other disposition of the property.

(o) And provided further, this section shall not alter or affect in any way laws or legal principles heretofore, now, or hereafter existing relating to the determination of the nature, extent or vesting of estates or property interests, and of the persons entitled thereto. But where, under the laws and legal principles existing without regard to this section, a gift, devise, transfer or conveyance has the legal effect of being made to all members of a class, some of whom are in esse and some of whom are in posse, the procedures authorized hereby may be utilized for the purpose of promoting the best interests of all members of the class, and this section shall be liberally construed to effectuate this intent. The remedies and procedures herein specified shall not be exclusive, but shall be cumulative, in addition to, and without prejudice to, all other remedies and procedures, if any, which now exist or hereafter may exist either by virtue of statute, or by virtue of the inherent powers of any court of competent jurisdiction, or otherwise.

(p) The provisions of this section shall apply to gifts, devises, transfers, and conveyances made both before and after April 5, 1949. (1949, c. 811, s. 1; 1971, c. 641, s. 1; 1997-456, s. 27; 2011-284, s. 50(a)-(d).)

#### **§ 41-11.2. Sale of standing timber; life estate.**

If real property with standing timber is subject to a life estate, the life tenant or owner of the remainder or reversionary interest may initiate a proceeding under Chapter 46A of the General Statutes to sell the timber, separate from the real property, pursuant to G.S. 46A-80. (2020-23, s. 14.)

#### **§ 41-12. Sales or mortgages of contingent remainders validated.**

In all cases where property has been conveyed by deed, or devised by will, upon contingent remainder, executory devise, or other limitations, where a judgment of a superior court has been rendered authorizing the sale or mortgaging, including execution of deeds of trust, of such property discharged of such contingent remainder, executory devise, or other limitations in actions or special proceedings where all persons in being who would have taken such property if the contingency had then happened were parties, such judgment shall be valid and binding upon the parties thereto and upon all other persons not then in being or whose estates had not been vested:

Provided, that nothing herein contained shall be construed to impair or destroy any vested right or estate. (1905, c. 93; Rev., s. 1591; C.S., s. 1745; 1923, c. 64; 1935, c. 36.)

**§ 41-13. Freeholders in petition for special taxes defined.**

In all cases where a petition by a specific number of freeholders is required as a condition precedent to ordering an election to provide for the assessment or levy of taxes upon realty, all residents of legal age owning realty for life or longer term, irrespective of sex, shall be deemed freeholders within the meaning of such requirement. (1915, c. 22; C.S., s. 1746.)

**§ 41-14. Reserved for future codification purposes.**