

§ 28A-24-6. Exceptions to the 120-hour survival requirement.

Survival by 120 hours is not required if any of the following apply:

- (1) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and the language is operable under the facts of the case.
- (2) The governing instrument expressly indicates that an individual is not required to survive the death of another individual by any specified period or expressly requires the individual to survive another individual for a specified period; but survival must be established by clear and convincing evidence.
- (3) The imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under G.S. 41-15; but survival must be established by clear and convincing evidence.
- (4) The application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition; but survival must be established by clear and convincing evidence.
- (5) The application of a 120-hour requirement of survival would deprive an individual or the estate of an individual of an otherwise available tax exemption, deduction or credit, expressly including the marital deduction, resulting in the imposition of a tax upon a donor or testator or other person (or their estate) as the transferor of any property. "Tax" includes any federal or State gift, estate or inheritance tax.
- (6) The application of a 120-hour requirement of survival would result in an escheat. (1947, c. 1016, s. 7; 1973, c. 1329, s. 3; 2007-132, s. 1.)