

§ 28A-2A-8. Manner of probate of attested written will.

(a) An attested written will, executed as provided by G.S. 31-3.3, may be probated in the following manner:

- (1) Upon the testimony of at least two of the attesting witnesses; or
- (2) If the testimony of only one attesting witness is available, then
 - a. Upon the testimony of such witness, and
 - b. Upon proof of the handwriting of at least one of the attesting witnesses who is dead or whose testimony is otherwise unavailable, and
 - c. Upon proof of the handwriting of the testator, unless he signed by his mark, and
 - d. Upon proof of such other circumstances as will satisfy the clerk of the superior court as to the genuineness and due execution of the will; or
- (3) If the testimony of none of the attesting witnesses is available, then
 - a. Upon proof of the handwriting of at least two of the attesting witnesses whose testimony is unavailable, and
 - b. Upon compliance with paragraphs c. and d. of subsection (a)(2) of this section; or
- (4) Upon a showing that the will has been made self-proved in accordance with the provisions of G.S. 31-11.6.

(b) Due execution of a will may be established, where the evidence required by subsection (a) of this section is unavoidably lacking or inadequate, by testimony of other competent witnesses as to the requisite facts.

(c) The testimony of a witness is unavailable within the meaning of this section when the witness is dead, out of the State, not to be found within the State, incompetent, physically unable to testify or refuses to testify. (1953, c. 1098, s. 12; 1977, c. 795, s. 2; 1979, c. 107, s. 4; 2011-344, ss. 3, 4.)