

Article 4.

Year's Allowance.

Part 1. Nature of Allowance.

§ 30-15. When spouse entitled to allowance.

(a) Every surviving spouse of a decedent, whether or not the surviving spouse has petitioned for an elective share, shall be entitled to receive an allowance having the value of sixty thousand dollars (\$60,000) for the surviving spouse's support for one year after the death of the deceased spouse unless the spouse is barred from seeking an allowance under G.S. 31A-1 or another applicable law. The spouse's allowance shall be in addition to the spouse's share of the decedent's estate if the decedent died intestate but shall be charged against the spouse's share of the decedent's estate if the decedent died testate.

(b) The right of a surviving spouse to file a claim for an allowance must be exercised during the lifetime of the surviving spouse by (i) the surviving spouse, (ii) the surviving spouse's agent under a durable power of attorney, or (iii), with approval of the court, by the guardian of the surviving spouse's estate or general guardian. A claim for an allowance must be made by filing a verified petition with the clerk of court of the county in which venue would be proper under G.S. 28A-3-1. There is no time limitation on bringing a claim for an allowance except that, if a personal representative has been appointed for the decedent's estate, the claim must be made within six months after the issuance of letters testamentary or letters of administration. In addition, if a personal representative has been appointed for the decedent's estate, a copy of the verified petition must be personally delivered or sent by first-class mail by the petitioner to the personal representative.

(c) If the surviving spouse dies after the petition is filed but before the claim for an allowance has been fully satisfied, any deficiency judgment existing at the time of the surviving spouse's death shall not expire.

(d) The spouse's allowance shall be exempt from any lien by judgment or execution against the property of the decedent or any other claim made against or owed by the decedent's estate. The spouse's allowance takes priority over any child's allowance under G.S. 30-17, except as set forth in subsection (e) of this section.

(e) If a surviving spouse entitled to an allowance fails to file a petition for an allowance within six months after the date of death of the decedent and an eligible person files a petition for a child's allowance in accordance with G.S. 30-17 before the spouse files a petition for an allowance, then the spouse's priority to receive the allowance prior to the child named in the petition is waived and the clerk may proceed to assign the full child's allowance to the eligible child named in the petition. If a petition for the spousal allowance is filed jointly with a petition for a child's allowance, then the spouse retains the right to receive the allowance prior to the child named in the petition. The waiver described in this subsection shall not affect the spouse's right to an allowance, only the spouse's priority to receive an allowance over any child's allowance under G.S. 30-17.

(f) A proceeding for a spouse's allowance shall be an estate proceeding governed by the provisions of Article 2 of Chapter 28 of the General Statutes. (1868-9, c. 93, s. 81; 1871-2, c. 193, s. 44; 1880, c. 42; Code, s. 2116; 1889, c. 499, s. 2; Rev., s. 3091; C.S., s. 4108; 1953, c. 913, s. 1; 1961, c. 316, s. 1; c. 749, s. 1; 1969, c. 14; 1981, c. 413, s. 1; 1995, c. 262, s. 4; 2000-178, s. 4; 2009-183, s. 1; 2011-344, s. 7; 2013-81, s. 1; 2018-40, s. 9.1; 2019-113, s. 3; 2023-120, s. 1.2; 2025-33, s. 12.1.)