

Article 2B.

Living Probate.

§ 28A-2B-1. Establishment before death that a will or codicil is valid.

(a) Any petitioner who is a resident of North Carolina and who has executed a will or codicil may file a petition seeking a judicial declaration that the will or codicil is valid.

(b) The petition shall be filed with the clerk of superior court and the matter shall proceed as a contested estate proceeding governed by Article 2 of Chapter 28A of the General Statutes. At the hearing before the clerk of superior court, the petitioner shall produce the original will or codicil and any other evidence necessary to establish that the will or codicil would be admitted to probate if the petitioner were deceased.

If an interested party contests the validity of the will or codicil, that person shall file a written challenge to the will or codicil before the hearing or make an objection to the validity of the will or codicil at the hearing. Upon the filing of a challenge or the raising of an issue contesting the validity of the will or codicil, the clerk shall transfer the cause to the superior court. The matter shall be heard as if it were a caveat proceeding, and the court shall make a determination as to the validity of the will or codicil and enter judgment accordingly.

If no interested party contests the validity of the will or codicil and if the clerk of superior court determines that the will or codicil would be admitted to probate if the petitioner were deceased, the clerk of superior court shall enter an order adjudging the will or codicil to be valid.

(c) Failure to use the procedure authorized by this Article shall not have any evidentiary or procedural effect on any future probate proceedings.

(d) For purposes of this Article only, a "petitioner" is a person who requests a judicial declaration that confirms the validity of that person's will or codicil. (2015-205, s. 2; 2019-178, s. 1(a).)

§ 28A-2B-2. Venue.

The venue for a petition under G.S. 28A-2B-1 is the county of this State in which the petitioner whose will or codicil is the subject of the petition resides. (2015-205, s. 2; 2017-212, s. 8.2.)

§ 28A-2B-3. Contents of petition for will validity.

(a) Petition. – A petition requesting an order declaring that a petitioner's will or codicil is valid shall be verified and shall contain the following information:

- (1) A statement that the petitioner is a resident of North Carolina and specifying the county of the petitioner's residence.
- (2) Allegations that the will was prepared and executed in accordance with North Carolina law and a statement that the will was executed with testamentary intent.
- (3) A statement that the petitioner had testamentary capacity at the time the will was executed.
- (4) A statement that the petitioner was free from undue influence and duress and executed the will in the exercise of the petitioner's free will.
- (5) A statement identifying the petitioner, and all persons believed by the petitioner to have an interest in the proceeding, including, for any interested parties who are minors, information regarding the minor's appropriate representative.

(b) The petitioner shall file a copy of the will or codicil with the petition and tender the original will or codicil at the hearing as provided in G.S. 28A-2B-1(b). If an order is entered

declaring the will or codicil to be valid, the court shall affix a certificate of validity to the will or codicil. (2015-205, s. 2; 2019-178, s. 1(b).)

§ 28A-2B-4. Declaration by court; bar to caveat.

(a) If the court enters a judgment declaring a will or codicil to be valid, such judgment shall be binding upon all parties to the proceeding, including any persons represented in the proceeding pursuant to the provisions of G.S. 28A-2-7, and no party bound by the judgment shall have any further right to, and shall be barred from filing, a caveat to the will or codicil once that will or codicil is entered into probate following the petitioner's death.

(b) If the court declares a will or codicil to be valid, upon the motion of the petitioner or the court, the court may order that the will or codicil cannot be revoked and that no subsequent will or codicil will be valid unless the revocation or the subsequent will or codicil is declared valid in a proceeding under this Article. If the court enters such an order, any subsequent revocation of the will or codicil not declared valid in a proceeding under this Article shall be void and any subsequent will or codicil not declared valid in a proceeding under this Article shall be void and shall not be admitted to probate.

(c) If a will or codicil judicially declared valid is revoked or modified by a subsequent will or codicil, nothing in this section shall bar an interested person from contesting the validity of that subsequent will or codicil, unless that subsequent will or codicil is also declared valid in a proceeding under this Article in which the interested person was a party. If a will or codicil judicially declared valid is revoked by a method other than the execution of a subsequent will or codicil, nothing in this section shall bar an interested person from contesting the validity of that revocation, unless that revocation is also declared valid in a proceeding under this Article in which the interested person was a party.

(d) Nothing in this Article shall preclude a party from seeking relief from a judgment pursuant to Rule 60 of the North Carolina Rules of Civil Procedure, including, without limitation, for fraud upon the court. (2015-205, s. 2; 2021-53, s. 1.4A.)

§ 28A-2B-5. Confidentiality.

Following the entry of a judgment, a party to the proceeding may move that the contents of the file be sealed and kept confidential, and upon such motion, the clerk shall seal the contents of the file from public inspection. The contents of the file shall not be released except by order of the clerk to any person other than:

- (1) The petitioner named in the petition.
- (2) The attorney for the petitioner.
- (3) Any court of competent jurisdiction hearing or reviewing the matter.

For good cause shown, the court may order the records that are confidential under this section to be made available to a person who is not listed in this section. Following the petitioner's death, a sealed file shall be unsealed upon the request of any interested person for the purpose of probate or other estate proceedings. (2015-205, s. 2.)

§ 28A-2B-6. Costs and attorneys' fees.

Costs, including reasonable attorneys' fees, incurred by a party in a proceeding under this Article shall be taxed against any party, or apportioned among the parties, in the discretion of the court, except that the court shall allow attorneys' fees for the attorneys of a party contesting the

proceeding only if the court finds that the party had reasonable grounds for contesting the proceeding. (2015-205, s. 2.)