

CHAPTER 30.1-09
RULES OF CONSTRUCTION - CONTRACTUAL ARRANGEMENTS
RELATING TO DEATH

30.1-09-01. Requirement that devisee survive testator by one hundred twenty hours. Repealed by S.L. 1993, ch. 334, § 50.

30.1-09-02. Choice of law as to meaning and effect of wills. Repealed by S.L. 1993, ch. 334, § 50.

30.1-09-03. (2-601) Rules of construction and intention applicable only to wills. The intention of a testator as expressed in the testator's will controls the legal effect of the testator's dispositions. The rules of construction expressed in this chapter apply unless a contrary intention is indicated by the will.

30.1-09-04. (2-602) Will passes all property - After-acquired property. A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death.

30.1-09-05. (2-603) Antilapse - Deceased devisee - Class gifts. If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if the devisee predeceased the testator, the issue of the deceased devisee who survive the testator by one hundred twenty hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree, then those of more remote degree take by representation. One who would have been a devisee under a class gift if that person had survived the testator is treated as a devisee for purposes of this section where that person's death occurred before or after the execution of the will.

30.1-09-06. (2-604) Failure of testamentary provision.

1. Except as provided in section 30.1-09-05, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue.
2. Except as provided in section 30.1-09-05, if the residue is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee, or to other residuary devisees in proportion to the interests of each in the remaining part of the residue.

30.1-09-07. (2-605) Change in securities - Accessions - Nonademption.

1. If a testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:
 - a. As much of the devised securities as is a part of the estate at the time of the testator's death.
 - b. Any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options.
 - c. Securities of another entity owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity.
 - d. Any additional securities of the entity owned by the testator as a result of a plan of reinvestment.

2. Distributions before death with respect to a specifically devised security not provided for in subsection 1 are not part of the specific devise.

30.1-09-08. (2-606) Nonademption of specific devises - Unpaid proceeds of sale, condemnation, or insurance - Sale by conservator.

1. A specific devisee has the right to specifically devised property in the testator's estate at the testator's death and to:
 - a. Any balance of the purchase price, together with any security interest, owed by a purchaser at the testator's death by reason of sale of the property by the testator.
 - b. Any amount of a condemnation award for the taking of the property unpaid at death.
 - c. Any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property.
 - d. Any property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.
2. If specifically devised property is sold, mortgaged, or otherwise encumbered by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated person, or a condemnation award, insurance proceeds, or recovery for injury to the property is paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated person, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery. This subsection does not apply if after the sale, encumbrance, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by at least one year. The right of a specific devisee under this subsection is reduced by any right the devisee has under subsection 1.

30.1-09-09. (2-607) Nonexoneration. A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

30.1-09-10. (2-608) Exercise of power of appointment. A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

30.1-09-11. Construction of generic terms to accord with relationships as defined for intestate succession. Repealed by S.L. 1993, ch. 334, § 50.

30.1-09-12. (2-609) Ademption by satisfaction.

1. Property a testator gave in the testator's lifetime to a person is treated as a satisfaction of a devise in whole or in part, only if the will provides for deduction of the gift, the testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise, or the devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

2. For the purposes of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.
3. If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying sections 30.1-09-05 and 30.1-09-06, unless the testator's contemporaneous writing provides otherwise.

30.1-09-13. (2-514) Contracts concerning succession. A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after July 1, 1975, can be established only by:

1. Provisions of a will stating material provisions of the contract;
2. An express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or
3. A writing signed by the decedent evidencing the contract.

The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.