

## Article 26.

### Declaratory Judgments.

#### **§ 1-253. Courts of record permitted to enter declaratory judgments of rights, status and other legal relations.**

Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree. (1931, c. 102, s. 1.)

#### **§ 1-254. Courts given power of construction of all instruments.**

Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status, or other legal relations thereunder. A contract may be construed either before or after there has been a breach thereof. (1931, c. 102, s. 2.)

#### **§ 1-255. Who may apply for a declaration.**

Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, a minor, an incompetent person, or an insolvent person, may have a declaration of rights or legal relations in respect thereto:

- (1) To ascertain any class of creditors, devisees, heirs, next of kin or others; or
- (2) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or
- (3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.
- (4) To determine the apportionment of the federal estate tax, interest and penalties under the provisions of Article 27 of Chapter 28A. (1931, c. 102, s. 3; 1985 (Reg. Sess., 1986), c. 878, s. 2; 2011-29, s. 1; 2011-284, s. 2.)

#### **§ 1-256. Enumeration of declarations not exclusive.**

The enumeration in G.S. 1-254 and 1-255 does not limit or restrict the exercise of the general powers conferred in G.S. 1-253 in any proceedings where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty. (1931, c. 102, s. 4.)

#### **§ 1-257. Discretion of court.**

The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding; provided, however, that a controversy between insurance companies, arising either by direct action or by joinder or intervention, with respect to which of two or more of the insurers is liable under its particular policy and the insurers' respective liabilities and obligations, constitutes a justiciable issue and the court should, upon petition by one or more of the parties to the action, render a declaratory judgment as to the liabilities and obligations of the insurers. (1931, c. 102, s. 5; 1989, c. 183.)

**§ 1-258. Review.**

All orders, judgment and decrees under this Article may be reviewed as other orders, judgments and decrees. (1931, c. 102, s. 6.)

**§ 1-259. Supplemental relief.**

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith. (1931, c. 102, s. 7.)

**§ 1-260. Parties.**

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General of the State shall also be served with a copy of the proceeding and be entitled to be heard. (1931, c. 102, s. 8.)

**§ 1-261. Jury trial.**

When a proceeding under this Article involves the determination of an issue of fact, such issue may be determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending. (1931, c. 102, s. 9.)

**§ 1-262. Hearing before judge where no issues of fact raised or jury trial waived; what judge may hear.**

Proceedings under this Article shall be tried at a session of court, as in other civil actions. If no issues of fact are raised, or if such issues are raised and the parties waive a jury trial, by agreement of the parties the proceedings may be heard before any judge of the trial division in which the proceeding is pending. If the parties do not agree upon a judge for the hearing and the proceeding is in the Superior Court Division, then upon motion of the plaintiff, the proceeding may be heard by a resident superior court judge of the district, or a superior court judge holding the courts of the district, or by any judge holding a session of superior court within the district. If the parties do not agree upon a judge and the proceeding is in the District Court Division, then upon motion of the plaintiff, the proceeding may be heard by the chief district judge or by a district judge authorized by the chief judge to hear motions and enter interlocutory orders. Such motion shall be in writing, with 10 days' notice to the defendant, and the judge designated shall fix a time and place for the hearing and notify the parties. Upon notice given, the clerk of the court in which the action is pending shall forward the papers in the proceeding to the judge designated. The hearing by the judge shall be governed by the practice for hearings in other civil actions before a judge without a jury. References to judges of the superior court in this section include emergency and special judges. (1931, c. 102, s. 10; 1971, c. 268, s. 9.)

**§ 1-263. Costs.**

In any proceeding under this article the court may make such award of costs as may seem equitable and just. (1931, c. 102, s. 11.)

**§ 1-264. Liberal construction and administration.**

This Article is declared to be remedial, its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and it is to be liberally construed and administered. (1931, c. 102, s. 12.)

**§ 1-265. Word "person" construed.**

The word "person" wherever used in this Article, shall be construed to mean any person, State agency, partnership, joint-stock company, unincorporated association, or society, or municipal corporation or other corporation of any character whatsoever. (1931, c. 102, s. 13; 2001-192, s. 3.)

**§ 1-266. Uniformity of interpretation.**

This Article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees. (1931, c. 102, s. 15.)

**§ 1-267. Short title.**

This Article may be cited as the Uniform Declaratory Judgment Act. (1931, c. 102, s. 16.)