

Article 4.

Qualification and Disqualification for Letters Testamentary and Letters of Administration.

§ 28A-4-1. Order of persons qualified to serve.

(a) Letters Testamentary. – Letters testamentary shall be granted to the executor or executors named or designated in the will, or if no such person qualifies, to any substitute or successor executor named or designated in the will. If no person so named or designated qualifies, letters testamentary shall be granted to some other person nominated by a person upon whom the will expressly confers the authority to make such nomination. If none of the foregoing persons qualifies, the clerk shall grant letters of administration in accordance with subsection (b) of this section.

(b) Letters of Administration. – Letters of administration shall be granted to persons who are qualified to serve, in the following order, unless the clerk of superior court in the discretion of the clerk of superior court determines that the best interests of the estate otherwise require:

- (1) The surviving spouse of the decedent;
- (2) Any devisee of the testator;
- (3) Any heir of the decedent;
- (3a) Any next of kin, with a person who is of a closer kinship as computed pursuant to G.S. 104A-1 having priority;
- (4) Any creditor to whom the decedent became obligated prior to the decedent's death;
- (5) Any person of good character residing in the county who applies therefor; and
- (6) Any other person of good character not disqualified under G.S. 28A-4-2.

When applicants are equally entitled, letters shall be granted to the applicant who, in the judgment of the clerk of superior court, is most likely to administer the estate advantageously, or they may be granted to any two or more of such applicants.

(c) Any interested person may file a petition pursuant to Article 2 of this Chapter alleging that all or any of the persons described in subsection (b) of this section is disqualified in accordance with G.S. 28A-4-2. (R.C., c. 46, ss. 2, 3; C.C.P., s. 456; 1968-9, c. 113, s. 115; Code, s. 1376; Rev., s. 3; C.S., s. 6; 1949, c. 22; 1973, c. 1329, s. 3; 1987, c. 357; 2011-344, s. 4.)

§ 28A-4-2. Persons disqualified to serve as personal representative.

No person is qualified to serve as a personal representative who:

- (1) Is under 18 years of age;
- (2) Has been adjudged incompetent in a formal proceeding and remains under such disability;
- (3) Is a convicted felon, under the laws either of the United States or of any state or territory of the United States, or of the District of Columbia and whose citizenship has not been restored;
- (4) Is a nonresident of this State who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate, and caused such appointment to be filed with the court; or who is a resident of this State who has, subsequent to appointment as a personal representative, moved from this State without appointing such process agent;
- (5) Is a corporation not authorized to act as a personal representative in this State;
- (6) Repealed by Session Laws 1999-133, s. 1.
- (7) Has lost that person's rights as provided by Chapter 31A;

- (8) Is illiterate;
- (9) Is a person whom the clerk of superior court finds otherwise unsuitable; or
- (10) Is a person who has renounced either expressly or by implication as provided in G.S. 28A-5-1 and 28A-5-2.
- (11) Is a person who is employed by, acts as an agent for, serves as legal counsel for, or conducts business in any contractual capacity with a property finder, as defined in G.S. 116B-52(11a), who has entered into an agreement subject to G.S. 116B-78 to locate the estate property defined by the agreement. (C.C.P., s. 457; Code, ss. 1377, 1378, 2162; Rev., s. 5; C.S., s. 8; 1973, c. 1329, s. 3; 1999-133, s. 1; 2011-344, s. 4; 2021-157, s. 2(a).)