

**§ 28A-22-5. Distribution of assets in kind in satisfaction of devises and transfers in trust.**

(a) Subject to the provisions of subsection (b) of this section, whenever under any will or trust indenture the executor, trustee or other fiduciary is required to, or has an option to, satisfy a devise or transfer in trust by a transfer of assets of the estate or trust in kind at the values as finally determined for federal estate tax purposes, the executor, trustee or other fiduciary shall, in the absence of contrary provisions in such will or trust indenture, be required to satisfy such devise or transfer by the distribution of assets fairly representative of the appreciation or depreciation in the value of all property available for distribution in satisfaction of such devise or transfer.

(b) The provisions of subsection (a) of this section shall not apply unless either:

- (1) The decedent's surviving spouse is the beneficiary of the devise or trust transfer described in subsection (a) of this section or of the residue of the estate or trust; or
- (2) Any "skip person", as that term is defined in Chapter 13 of the Internal Revenue Code of 1986, as amended, is or may be a current or future beneficiary of the devise or trust transfer described in subsection (a) of this section or of the residue of the estate or trust, and the value of the decedent's gross estate for federal tax purposes exceeds the value of the decedent's unused generation-skipping tax exemption available under Chapter 13 of the Internal Revenue Code of 1986, as amended. (1965, c. 764, s. 1; 1973, c. 1329, s. 3; 1995, c. 235, s. 5; 2011-284, s. 17.)