

§ 30-17. (Effective until March 1, 2024) When children entitled to an allowance.

Whenever any parent dies survived by any child under the age of 18 years, including an adopted child or a child with whom the widow may be pregnant at the death of her husband, or a child who is less than 22 years of age and is a full-time student in any educational institution, or a child under 21 years of age who has been declared mentally incompetent, or a child under 21 years of age who is totally disabled, or any other person under the age of 18 years residing with the deceased parent at the time of death to whom the deceased parent or the surviving parent stood in loco parentis, every such child shall be entitled to receive an allowance of five thousand dollars (\$5,000) for the child's support for the year next ensuing the death of the parent. The allowance shall be in addition to the child's share of the deceased parent's estate and shall be exempt from any lien by judgment or execution against the property of the deceased parent. The personal representative of the deceased parent shall, within one year after the parent's death, assign to every such child the allowance herein provided for; but if there is no personal representative or if the personal representative fails or refuses to act within 10 days after written application by a guardian or next friend on behalf of the child, the allowance may be assigned by a magistrate or clerk of court upon application.

If the child resides with the surviving spouse of the deceased parent at the time the allowance is paid, the allowance shall be paid to the surviving spouse for the benefit of the child. If the child resides with its surviving parent who is other than the surviving spouse of the deceased parent, the allowance shall be paid to the surviving parent for the use and benefit of the child. The payment shall be made regardless of whether the deceased died testate or intestate or whether the surviving spouse petitioned for an elective share under Article 1A of Chapter 30 of the General Statutes. Provided, however, the allowance shall not be available to a deceased father's child born out of wedlock, unless the deceased father has recognized the paternity of the child by deed, will, or other paper-writing, or unless the deceased father died prior to or within one year after the birth of the child and is established to have been the father of the child by DNA testing. If the child does not reside with a surviving spouse or a surviving parent when the allowance is paid, the allowance shall be paid to the child's general guardian or guardian of the estate, if any, and if none, to the clerk of the superior court who shall receive and disburse the allowance for the benefit of the child. (1889, c. 496; Rev., s. 3094; C.S., s. 4111; 1939, c. 396; 1953, c. 913, s. 2; 1961, c. 316, s. 2; c. 749, s. 3; 1969, c. 269; 1971, c. 528, s. 22; 1973, c. 1411; 1975, c. 259; 1981, c. 413, s. 2; c. 599, s. 7; 1995, c. 262, s. 5; 1997-310, s. 2; 2005-225, s. 1; 2011-344, s. 7; 2012-71, ss. 2(a), 3; 2013-198, s. 13; 2017-158, s. 5.)

§ 30-17. (Effective March 1, 2024) When children entitled to an allowance.

(a) Every child of a decedent who is under the age of 21 years at the time of the decedent's death, including an adopted child or a child in utero, and every child who is under the age of 21 years at the time of the decedent's death with whom the decedent stood in loco parentis at the time of death, shall be entitled to receive an allowance having a value of ten thousand dollars (\$10,000) for the child's support for one year after the death of the decedent. The allowance shall be in addition to the child's share of the decedent's estate regardless of whether the decedent died testate or intestate.

(b) The right of a child to file a claim for an allowance must be exercised during the lifetime of the child by the person with priority to file on behalf of the child as provided in subsection (c) of this section. A claim for an allowance must be made by filing a verified petition with the clerk of court of the county in which venue would be proper under G.S. 28A-3-1. There is no time limitation on bringing a claim for an allowance except that, if a personal representative has been appointed for the decedent's estate, the claim must be made within six months after the issuance of letters testamentary or letters of administration. In addition, if a personal representative has been appointed for the decedent's estate, a copy of the verified petition must be personally delivered or sent by first-class mail by the petitioner to the personal representative.

(c) The person entitled to file a petition on behalf of the child for a child's allowance shall be in the following order of priority:

- (1) The general guardian or guardian of the estate of the child, if any.
- (2) The surviving parent of the child if the child resides with the surviving parent.
- (3) The person with whom the child resides.

If the clerk of court determines that no person entitled to file a petition pursuant to this subsection is a fit or suitable individual, the clerk, upon the clerk's own motion, may appoint another individual if the clerk determines that individual better represents the best interests of the child as the representative.

(d) The child's allowance shall be exempt from any lien by judgment or execution against the property of the decedent or any other claim made against or owed by the decedent's estate except that the spouse's allowance under G.S. 30-15 shall take priority over any child's allowance. A child's allowance shall only be awarded after the full spouse's allowance under G.S. 30-15 has been awarded. (1889, c. 496; Rev., s. 3094; C.S., s. 4111; 1939, c. 396; 1953, c. 913, s. 2; 1961, c. 316, s. 2; c. 749, s. 3; 1969, c. 269; 1971, c. 528, s. 22; 1973, c. 1411; 1975, c. 259; 1981, c. 413, s. 2; c. 599, s. 7; 1995, c. 262, s. 5; 1997-310, s. 2; 2005-225, s. 1; 2011-344, s. 7; 2012-71, ss. 2(a), 3; 2013-198, s. 13; 2017-158, s. 5; 2023-120, s. 1.2.)