

## A Frequent Flyer in Estates: The Spousal Year's Allowance

If I had to guess, I would say the most common filing in a decedent's estate is the year's allowance. Last year in NC, there were [18,000 filings](#) for a year's allowance. There are two types of year's allowance: one for children of the decedent and one for the spouse of the decedent. This post focuses on some basics of the spousal year's allowance.

### What is the spousal year's allowance?

The spousal year's allowance is intended to provide a means of support for the surviving spouse of a decedent upon the decedent's death and during the administration of the decedent spouse's estate. It first appeared in NC statutory law in 1796. See 1796 N.C. Session Laws, ch. 469. Prior to the enactment in 1796, the estate administrator could sell "the whole crop and provisions" of the deceased, and thereby deprive the widow of the means of subsistence for herself and her family. *Pritchard v. First-Citizens Bank and Trust Co.*, 38 N.C. App. 489, 492 (1978).

The 1796 law creating the year's allowance in NC authorized the widow to use property of the decedent's estate ("crop, stock, and provisions then on hand") that was absolutely necessary for the support of herself and her family before the appointment of the administrator. *Id.* The widow could then petition the court to appoint persons who would allot portions of the crop, stock, and provisions to support her and her family for one year. *Id.* The amount of the allotment was determined based on the necessities of the widow and her children. *Id.* The purpose was "to make provision for the pressing wants of the widow, personally, and to enable her at a mournful juncture, to keep her family about her for a short season." *Kimball v. Deming*, 27 N.C. 418, 419 (1845). It was not intended to provide the widow with an additional interest in the decedent's estate. *Id.*

Today, the spousal allowance is available for both widows and widowers but it retains the purpose of providing for the surviving spouse subsequent to the death of the decedent spouse. See *Bryant v. Bowers*, 182 N.C. App. 338, 340 (2007) ("A year's allowance is allotted to a surviving spouse to meet immediate needs, maintain a standard of living, ease the mourning process, and keep the family intact.").

### What is the amount of the spousal year's allowance?

NC has a two-tiered system applicable to the spousal allowance. The spouse has a right to a statutory minimum allowance that is available to provide for the necessities of the spouse. *Pritchard*, 38 N.C. App. at 493. Effective January 1, 2019, this amount was increased from \$30,000 to \$60,000. See [S.L. 2018-40](#). One likely outcome of this change will be to reduce the need for full administration of estates and increase the prevalence of estates where the only thing

filed is a year's allowance and small estates such as affidavit by collection under [G.S. Chapter 28A, Article 25](#).

The spouse may apply to the clerk for an assignment of an allowance greater than \$60,000. *Id.* The clerk may then assign a "value sufficient for the support of the spouse" based on the estate and condition of the decedent. [G.S. 30-31](#). The purpose is to provide spouse of a solvent decedent with the same level of support during the first year after the decedent's death that the spouse had been accustomed to receiving from the deceased spouse. *Pritchard*, 38 N.C. App. at 493. The maximum amount assigned by the clerk is one half of the average annual net income of the decedent for the three years immediately preceding the decedent's death. *Id.* "Net income" means take home pay or after tax income. *Pritchard*, 38 N.C. App. at 493.

### **How does the spouse apply for the year's allowance?**

It is the duty of the personal representative of the estate to assign the allowance if the spouse applies for the allowance within one year of the death of the deceased spouse. [G.S. 30-16](#). If the PR fails to assign the allowance or if there is no PR because a full estate is not opened, the spouse may apply to a magistrate or the clerk. *Id.* In practice, most spouses (and attorneys) go directly to the clerk for the assignment of the allowance, skipping the PR. NC Administrative Office of the Courts Form [E-100](#) is available to apply with the clerk. The cost is currently \$8 to apply. Section 12(a) of recently filed [House Bill 226](#) seeks to raise that amount to \$20.

The PR, the surviving spouse, a child through a guardian, or any creditor, devisee, or heir of the decedent may appeal from the clerk's assignment of the year's allowance by filing a copy of the assignment and a notice of appeal within 10 days after the assignment. [G.S. 30-23](#). Interestingly, the assignment is appealed *de novo* to superior court as a special proceeding, rather than an estate proceeding. *Id.*

To apply for an amount greater than the statutory minimum of \$60,000, the spouse files a petition initiating a special proceeding before the clerk. [G.S. 30-27](#); [30-28](#). The petition must set forth facts entitling the spouse to the year's support, the value claimed, facts showing the decedent died with an estate greater than \$60,000,\* and whether or not an allowance has already been made to the petitioner. *Id.*

### **What property is available to satisfy the allowance?**

The spousal allowance is only payable from personal property, not real property or proceeds from the sale of real property. [G.S. 30-18](#); *Denton v. Tyson*, 118 N.C. 542 (1896). Frequently, the year's allowance is used to assign money in bank accounts and cars to the surviving spouse.

The allowance has priority over claims against the estate, meaning it may be paid before any claims of the estate are paid. However, the property assigned is not free from a security interest in

the property. For example, if the decedent dies with a car worth \$10,000 that is subject to a lien in the amount of \$5,000, only \$5,000 from the value of the car is available to assign to the year's allowance.

### **What if there is not enough personal property in the estate to satisfy the allowance?**

If the decedent spouse dies and does not own enough personal property to satisfy the minimum year's allowance of \$60,000, then the clerk will prepare and clock a deficiency judgment reflecting the amount of the deficiency. G.S. 30-20. Typically the clerk uses [NC AOC E-101](#) to record the deficiency. The clerk does not index the deficiency judgment in the judgment abstracting system; instead the judgment is placed in the decedent's estate "E" file. If assets later come into the PR's hand, the deficiency is paid to the spouse.

Another likely change to come from the increase in the spousal year's allowance amount to \$60,000, is the increase in deficiency judgments against the PR for the balance owed. The deficiency has no expiration date; it is cancelled by the clerk when it is paid in full. It is not clear whether the deficiency survives the death of the surviving spouse and is payable to the surviving spouse's estate.

It is also important to note the spousal year's allowance is not superior to the child's year's allowance. If there is a child entitled to an allowance under [G.S. 30-17](#) and there is not enough personal property to satisfy both the spousal allowance and the child's allowance, then the amount assigned will be prorated to pay an equal portion of both allowances.

### **How does it impact the estate?**

The allowance is available in both testate (decedent died with a will) and intestate (decedent died without a will) estates. The amount of the spousal allowance is applied against the amount the surviving spouse takes under a will. [G.S. 30-15](#). It is not credited against the share the surviving spouse takes in an intestate estate.

### **Is a spouse always entitled to an allowance?**

A spouse of a decedent is not always entitled to the allowance. The spouse is not entitled to an allowance if:

1. The spouse committed an act barring property rights set forth in G.S. 31A-1, such as voluntarily separating from the decedent spouse and living in adultery that has not been condoned or willfully abandoning the spouse. S. 31A-1(b).
2. The spouse took the life of the decedent and is determined to be a "slayer" under G.S. 31A-3. See [S. 31A-4](#).
3. The spouse waived the right to a year's allowance in a premarital agreement. See In re

Estate of Cline, 103 N.C. App. 83 (1991).

4. The spouse renounces or waives the right to a year's allowance. See [NC AOC Form E-213](#); G.S. 31B-1.

## Who is a spouse?

It would seem the issue of who is a “spouse” of the decedent entitled to an allowance is pretty straightforward, but the facts involved in two recent NC Court of Appeals opinions indicated otherwise. A 2016 case from the NC Court of Appeals, [In re Estate of Peacock, 788 S.E.2d 191 \(2016\)](#), dealt specifically with whether someone was a spouse of the decedent and thus entitled to a year's allowance. The case involved Richard and Bernadine, who were married and then divorced. They reconciled in the last years before Richard's death. The day before Richard's death, while he was in the hospital, a reverend performed a marriage ceremony between Richard and Bernadine. Richard died intestate and his daughter applied for letters of administration and did not identify Bernadine as an heir.

A proceeding was filed before the clerk to determine whether the marriage in the hospital was valid and thus entitled Bernadine to inherit and otherwise share in the estate. The clerk entered an order that Bernadine was not an heir because the hospital ceremony was conducted without a marriage license and therefore did not result in a valid marriage. The petitioner appealed to superior court who affirmed the order of the clerk.

On appeal, the NC Court of Appeals reversed and held that, while it is a Class 1 misdemeanor for a minister or other authorized person to conduct a marriage ceremony without first receiving a license, the absence of a valid marriage license does not invalidate a marriage performed in accordance with the requirements of G.S. 51-1. As a result, Bernadine was entitled to all rights of a spouse of an intestate decedent, including the right to a spousal year's allowance in addition to her intestate share of Richard's estate.

The second case I'll leave to your weekend reading because this post is already too long. The facts dealt with a son of the decedent from a previous marriage who sought to set aside a year's allowance assigned to a surviving spouse, Carol. The son claimed the marriage between Carol and the decedent was void because the decedent had a living wife, his mother, when he married Carol. Spoiler alert: the marriage was deemed void *ab initio* and the assignment was set aside. It is an unpublished decision, *In re Estate of Meetze*, 802 S.E.2d 916 (2017), available [here](#).

\* House Bill 226 filed February 28, 2019 contains a technical correction related to the spousal year's allowance. Section 4 of the bill revises G.S. 30-29 reflect the current year's allowance of \$60,000. The statute currently refers to the prior amount of \$30,000.

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