

Real Life Issues in Land Records



North Carolina Department of
the Secretary of State

Elaine F. Marshall, Secretary of State

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ESTATES:

Wills

&

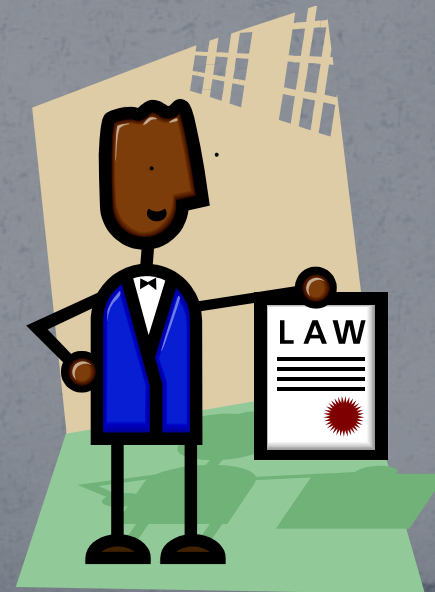
Intestate Succession

Clinton, NC

March 20, 2014

Disclaimer!!

- This is intended to give a VERY general overview of Estates and Land Records!
- I am not an attorney and I cannot give legal advice.



In North Carolina
Multiple Chapters
of the

General Statutes
Deal with
Estates



These Include:

- 28A – Administration of Decedent's Estates
- 28B – Estates of Absentees in Military Service
- 28C – Estates of Missing Persons
- 29 – Intestate Succession
- 30 – Surviving Spouses
- 31 – Wills
- 31A – Acts Barring Property Rights
- 31B – Renunciation of Property
- 31C – Uniform Disposition of Community Property Rights at Death Act

Terms / Definitions

- Estate – All the property of a decedent
- Net estate – what is left after:
 - family allowances,
 - costs of administration, and
 - claims against the estate
- Testate – having left a valid will
- Intestate – having no will (or a valid will)
- Share – that part of the net estate or property to which any person is entitled to receive

- Executor / Executrix – Someone named in a will as the person to carry out the wishes of the decedent through the instructions of the will
- Administrator / Administratrix – A person appointed by the court to administer an estate if there is no will
- Personal representative – the executor or administrator
- Intestate Succession – the order of who inherits property & the share each heir is due to inherit when a person dies intestate (i.e. the spouse, children, parents, siblings, grandchildren, cousins, etc.)

- Devisee – Any person named in a will to receive property
- Heir – Any person entitled to receive real or personal property upon intestacy
- Lineal descendants – children and successive generations of children
- Per Stirpes – In equal shares to each member of a specified class.
- Probate – The process of proving before a competent judicial authority that a will is valid

Administration of Decedent's Estates

Chapter 28A

§ 28A-2-1. Clerk of Superior Court

- (a) The clerk of court of each county shall have jurisdiction of the administration, settlement and distribution of estates of decedents.

GS 28A-3-1. Proper County

- The venue for the probate of a will and all proceedings relating to the administration of an estate shall be:
 - (1) In the county in this State where the decedent was a resident at the time of death; or
 - (2) If , at the time of death, the decedent was not a resident of North Carolina then in any county where the decedent had property.

§ 28A-2A-13. Wills filed in clerk's office

- - All original wills shall remain in the clerk's office,
- - If the said will contains a devise of real estate, outside the county where the will is probated, then a certified copy of the will, may be recorded in the office of the clerk of superior court in any county in the State in which the land is situated with the same effect as to passing the title to the real estate as if the will had been probated in that county.

§ 28A-2A-14. Validation of wills heretofore certified and recorded.

- All wills which have prior to March 9, 1921, been certified and recorded in the office of the clerk of the superior court of any county, substantially following the provisions of G.S. 28A-2A-13, are hereby validated and approved as to the conveyance and transfer of any title to real estate as contained therein, to the same extent as if said wills had originally been probated and filed in said county, and the clerk of the superior court of said county had had jurisdiction to probate the same, provided the probates and witnesses to the said wills are sufficient and according to law. (1921, c. 108, s. 2; C.S., s. 4146(a); 2011-344, ss. 3, 4.)

§ 28A-17-1. Sales of real property.

- The personal representative may, at any time, apply to the clerk of court where decedent's real property or some part thereof is situated, by petition, to sell such real property for the payment of debts and other claims against the decedent's estate.



Wills

Chapter 31



§ 31-1. Who may make will.

- Any person of sound mind, and 18 years of age or over, may make a will.

§ 31-3.1. Will invalid unless statutory requirements complied with.

- No will is valid unless it complies with the requirements prescribed therefor by this Article.



GS 31-3.2 Kinds of wills:

- (a) Personal property and real property may be devised by
 - 1 – An Attested Will that complies with GS 31-3.3
 - A written will that has been signed by the testator and attested by at least two competent witnesses.
 - or
 - 2- A Holographic Will that complies with GS 31-3.4
 - Written entirely in hand, signed by the testator and found among the decedent's valuable papers, safe-deposit box, etc.
 - No attesting witness to a holographic will is required

Types of wills:

- (b) Personal property may also be devised by a nuncupative will which complies with the requirements of G.S. 31-3.5.
 - 1 – Made orally by a person who is in imminent peril of death and does not survive the sickness or peril, and
 - 2 – Declared to be that person's will before two competent witnesses simultaneously present and specifically requested by the person to bear witness thereto.

§ 31-5.1. Revocation of written will.

- A written will, or any part thereof, may be revoked only
 - (1) By a subsequent written will or codicil or other revocatory writing executed in the manner provided herein for the execution of written wills, or
 - (2) By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by the testator himself or by another person in the testator's presence and by the testator's direction.

§ 31-5.3. Will not revoked by marriage;

- A will is not revoked by a subsequent marriage of the maker

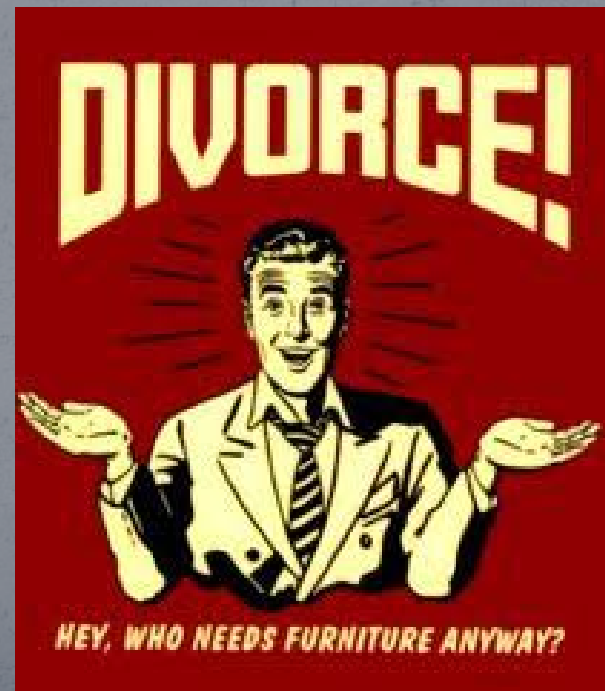
We have a lot of cases where couples are in second marriages and each has children of their own.

Mike Janko

QUOTE-ID.COM

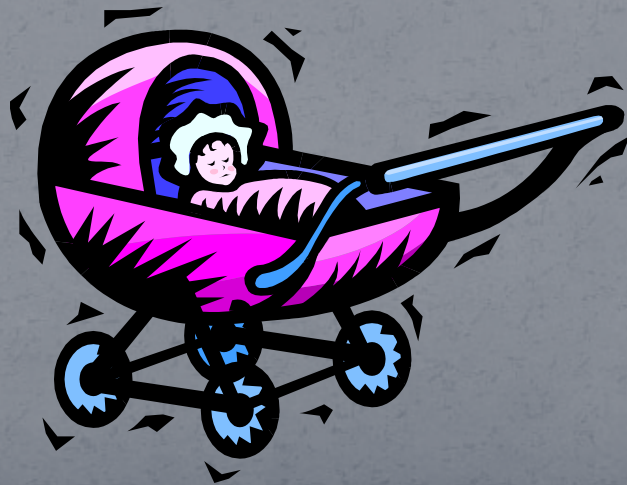
§ 31-5.4. Revocation by divorce or annulment

- Dissolution of marriage by absolute divorce or annulment after making a will does not revoke the will of any testator



§ 31-5.5. After-born or after-adopted child; children born out of wedlock;

- (a) A will shall not be revoked by the subsequent birth or adoption of a child by the testator or the subsequent entitlement of an after-born child out of wedlock to take as an heir in the event of intestacy.



§ 31-5.6. No revocation by subsequent conveyance.

- No conveyance done after the execution of a will shall be revoked.

Depository for Wills.

- § 31-11. Depositories in offices of clerks of superior court where living persons may file wills.
 - The clerk of superior court is required to keep a depository where any person may file a will for safekeeping that is not open to public inspection.

§ 31-38. Devise presumed to be in fee.

- Real estate devised to anyone is considered to be granted in fee simple, unless shown in plain terms by the will that the testator intended otherwise.

GS 31-39. Probate necessary to pass title

- (a) A duly probated will is effective to pass title to real and personal property.

GS 31-39. Probate necessary to pass title

- (b) A will is not effective to pass title to real or personal property against lien creditors or purchasers for valuable consideration from the intestate heirs at law of the decedent unless the will is probated or offered for probate before the earlier of
 - (i) the date of approval by the clerk of the final account of the decedent's estate, or
 - (ii) the date is two years from the date of death of the decedent.

Probate necessary to pass title

- (c) A will duly probated in one county of this State is not effective to pass title to an interest in real property located in any other county of this State as against lien creditors or purchasers for valuable consideration from the intestate heirs at law of a decedent unless a certified copy of the will is filed in the office of the clerk of superior court in the county where the real property lies within the time limitation set forth in subsection (b) of this section.

§ 31-41. Will relates to death of testator.

- Every will with reference to real and personal property shall take effect as if it had been executed immediately before the death of the testator, unless a contrary intention is written into the will.

Intestate Succession

NCGS Chapter 29



Taken as a whole, the Laws of Intestate Succession were written as the intention of the State Legislature to write a reasonable will for those individuals who never bothered to write a will of their own or never got around to seeing a lawyer to get one written.

§ 29-4. Curtesy and dower abolished.

- The estates of curtesy and dower are hereby abolished. (1959, c. 879, s. 1.)
 - Property acquired by either spouse during a marriage is marital property.
 - Property acquired prior to marriage or gifts and inheritances to either spouse individually after marriage is considered separate property.

Kinship

GS 29-5 Computation of Next of Kin

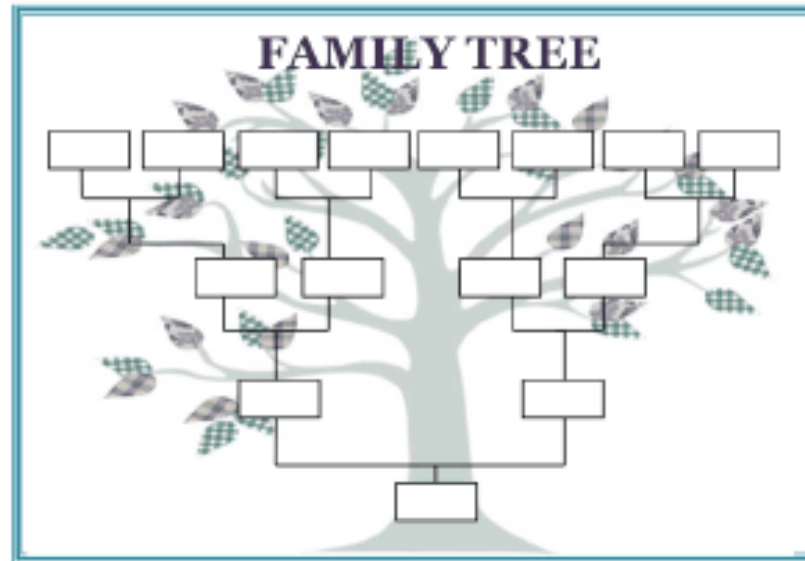
- Next of kin computed as provided in GS 104A-1

GS 104A. Degrees of Kinship

- (1) The degrees of lineal kinship of two persons is computed by counting one degree for each person in the line of ascent or decent, exclusive of the person from whom the computing begins

GS 29-6 Lineal Succession

- No limit on the right of succession by lineal descendants



www.FamilyTreeTemplates.net

NC GS 29-7 Collateral succession limited.

- There shall be no right of succession by collateral kin who are more than five degrees of kinship removed from an intestate
- Provided there is nobody within five degrees of kinship, collateral succession is unlimited to prevent any property from escheating

NC GS 29-8. Partial intestacy

- If part of an estate is disposed of by a valid will, but not all of the estate,
- that part not disposed of by the decedent's will shall be distributed as intestate property.

NC GS 29-9. Inheritance by unborn infant.

- Lineal descendants and other relatives of an intestate born within 10 lunar months after the death of the intestate, shall inherit as if they had been born in the lifetime of the intestate and had survived him.
 - *Byerly v Tolbert*, 250 N.C. 27, 108 S.E.2d 29 (1959)
 - *Britton v Miller* 63 N.C. 208 (1869)
 - *Will of Hester*, 84 N.C. App 585, 353 S.E.2d 643

NC GS 29-11. Aliens

- Unless otherwise provided by law, it shall be no bar to intestate succession by any person, that the person or any other person through whom the person traces the person's inheritance, is or has been an alien. (1959, c. 879, s. 1; 2011-344, s. 5)



Escheats

NCGS 29-12

- If there is nobody entitled to inherit the property under GS 29-14 or GS29-15 the estate will escheat to the state as provided in GS 116B-2.

NCGS 116B-2

- When a person without an heir dies
 - Either without a will
 - Or
 - With property not disposed of in the will
- the State Treasurer will have the “right” to institute a civil action

NC GS 29-14

Share of Surviving Spouse.

- What does the spouse get?

- (a) Real Property. – The share of the surviving spouse in the real property is:
 - (1) If the intestate is survived by
 - only one child
 - or by any lineal descendant of only one deceased child
 - The spouse inherits a one-half interest in the real property
 - the child or its descendants gets the other half.

- (2) If the intestate is survived by
 - Two or more children
 - Or by one child and any lineal descendant of one or more deceased children
 - Or by the lineal descendants of two or more deceased children
- The spouse inherits a one-third interest in the real property
 - The other two-thirds is shared by the children or their descendants.

- (3) If the intestate is not survived by
 - Any lineal descendants
 - But is survived by one or both parents,
- The spouse inherits a one-half interest the real property
- The parent or parents inherit the other half

- (4) If the intestate is not survived by:
 - Any lineal descendants
 - Or by a parent
- Then, and only, then will the spouse inherit all the real property

§ 29-15. Shares of others than surviving spouse.

- If there is no surviving spouse:
 - Then the child or children (or their descendants) will inherit the entire estate per stirpes
- If there is no surviving spouse and no children or their descendants:
 - Then the parents will inherit the estate
- If there is no surviving spouse, no children, no parents:
 - Then the siblings (or their descendants) will inherit the estate

§ 29-15. Shares of others than surviving spouse.

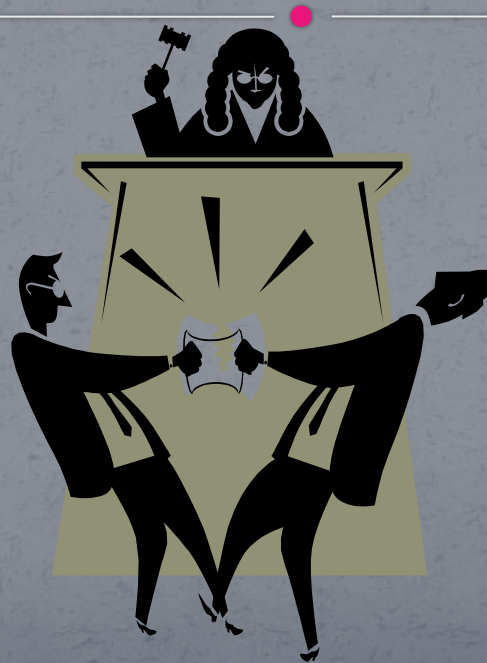
- If there is no surviving:
 - Spouse
 - Children
 - Or their descendants
 - Parents
 - Siblings
 - Or their descendants
- Then:
 - Both sets of grandparents will each inherit one-half of the estate.

§ 29-15. Shares of others than surviving spouse.

- If either set of the grandparents are deceased,
 - The aunts and uncles on that side of the family
 - Or their descendants
 - Will inherit that half of the estate.
- If either side of the family has no-one to inherit, (grandparents, aunts, uncles, cousins, etc.) that half of the estate,
 - Then the other side of the family will inherit the entire estate,

Article 3

Distribution among Classes

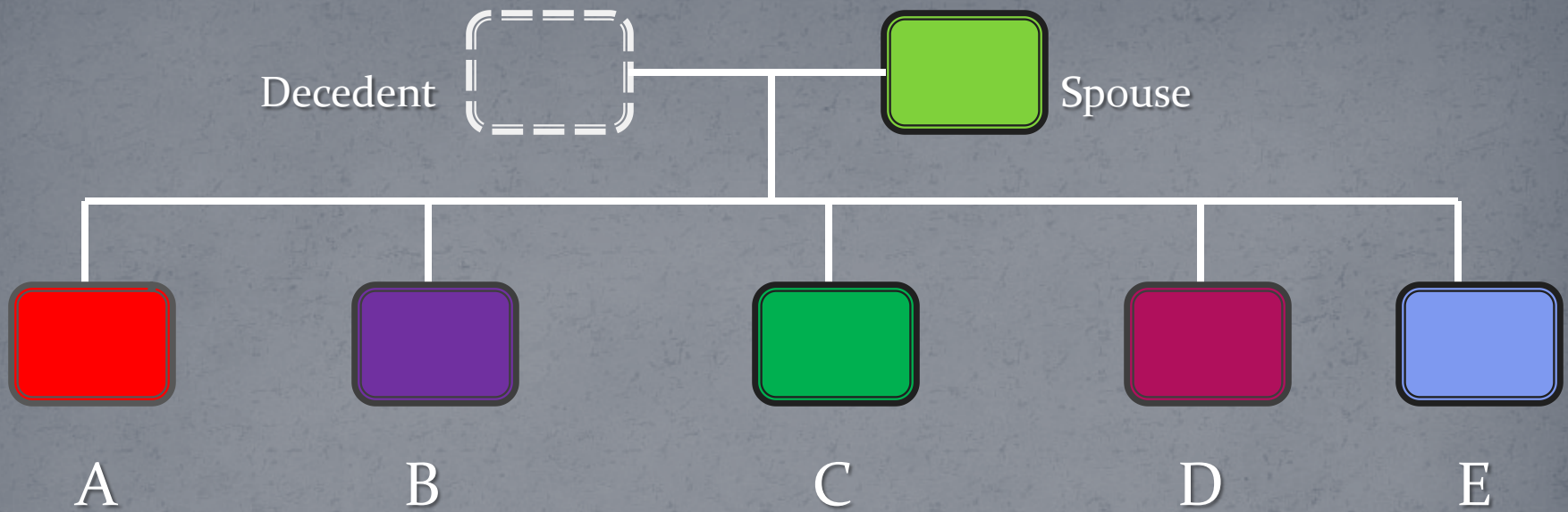


NC GS 29-16. Distribution among Classes

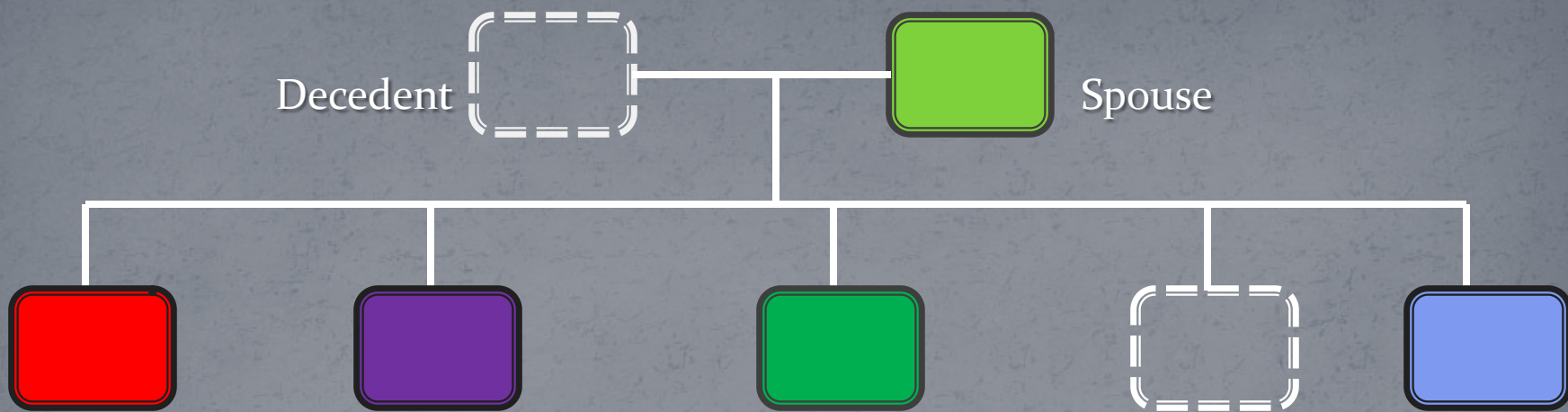
- (a) Children and Their Lineal Descendants
 - If the intestate is survived by lineal descendants,
 - their respective shares in the property which they are entitled to take under GS 29-15 of this Chapter shall be determined in the following manner:

NC GS 29-16. Distribution among Classes (continued)

- (1) Children –
 - To determine the share of each surviving child, divide the property by
 - the number of surviving children
 - plus the number of deceased children who have left lineal descendants surviving the intestate.

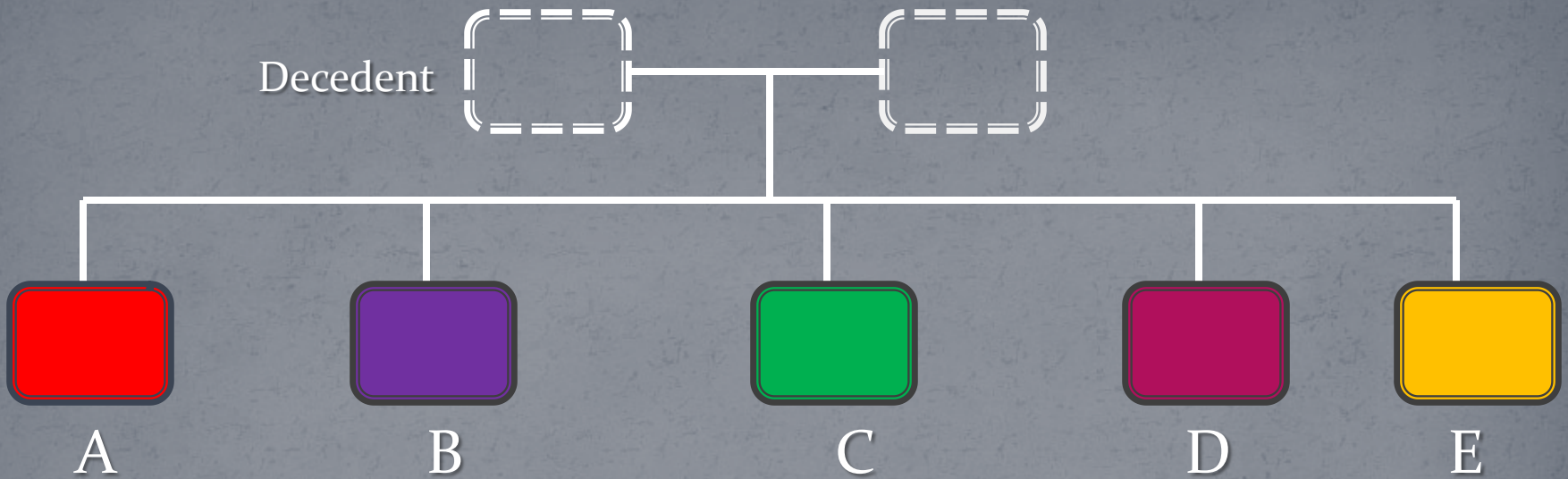


- Spouse gets $\frac{1}{3}$ and the children share $\frac{2}{3}$
- Each child would get $\frac{2}{15}$
 - $(\frac{2}{3} \times \frac{1}{5} = \frac{2}{15})$

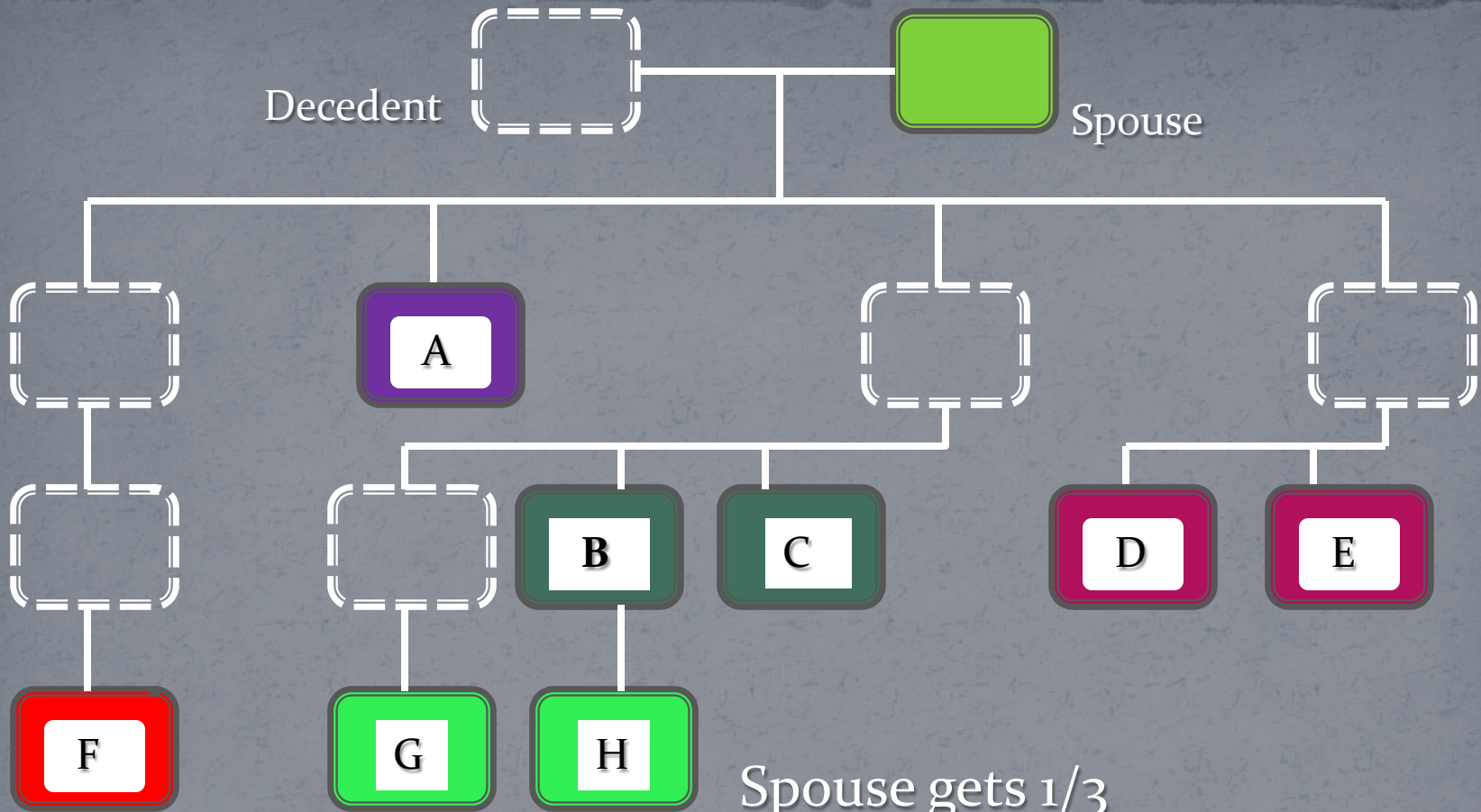


- Spouse gets $\frac{1}{3}$
- Each child get $\frac{1}{6}$
 - $(\frac{2}{3} \times \frac{1}{4} = \frac{2}{12} = \frac{1}{6})$

Decedent

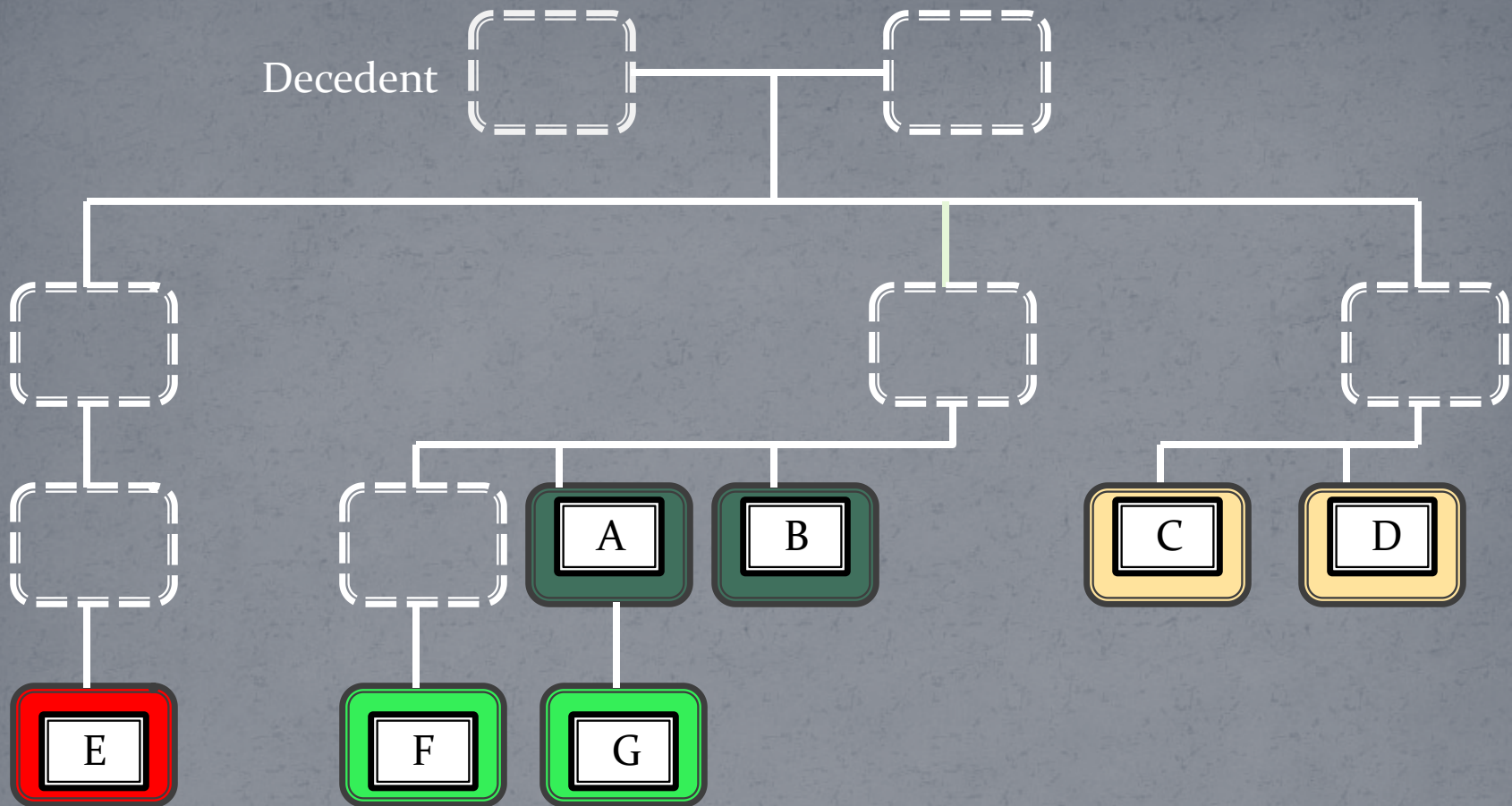


- Each child gets $1/5$



A and F get 1/6 each
 B, C, & G get 1/18 each
 D & E get 1/12 each
 H gets nothing

Spouse gets 1/3
 $(2/3 \times 1/4 = 2/12 = 1/6)$
 $(1/6 \times 1/3 = 1/18)$
 $(1/6 \times 1/2 = 1/12)$



E gets $1/3$

A, B, & F get $1/9$ each $(1/3 \times 1/3 = 1/9)$

C & D get $1/6$ each $(1/3 \times 1/2 = 1/6)$

G gets nothing

Article 4

Adopted Children

NC GS 29-17 Succession by, through and from Adopted Children

- Adoptive children are treated as natural children in the adoptive families and are severed from their natural families.

Article 5

Legitimated Children

GS 29-18 Succession by, through and from legitimated children.

- Illegitimate children who have been legitimated and the heirs of such children are entitled to property the same as any child born in lawful wedlock.
- If the child dies intestate, the property is distributed as if the child had been born in lawful wedlock.

Article 6

Illegitimate Children

GS 29-19 Succession by, through, and from, illegitimate children.

- For the purpose of intestate succession, an illegitimate child:
- (a) will be treated as a legitimate child of the mother.
- (b) will be an heir of:
 - (1) Any person who was adjudged to be the father
 - (2) Any person who acknowledges himself to be the child's father AND
 - Filed with the Clerk of Superior Court during his lifetime AND the child's lifetime.

§ 29-21. Share of surviving spouse.

- The share of a surviving spouse of an intestate born out of wedlock will be same as provided for in GS 29-14

GS 29-22 Shares of other than the surviving spouse

- Anyone surviving the illegitimate intestate, other than the surviving spouse will inherit as provided for in GS 29-15 .
- The parents and collateral kin will inherit as provided for in GS 29-15.

§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.

- The surviving may elect to take a life estate in the real estate of the deceased spouse rather than the share as provided in GS 29-14 or GS 29-21.
- The right to take a life estate interest will terminate if the surviving spouse does not act within the time frame as set out in the statute.

Changing names in tax records using “et ux” or “et vir”

- Latin meaning “and wife” or “and husband”
 - Shows at a glance that the property is estate by the entirety without having to track down the granting document
- Property automatically becomes the sole property of the surviving spouse.
- Proof of death via a death certificate is all that is needed to change the tax listing

Changing names in tax records

- Date of death should be used in changing the listing
- Estate files numbering:
 - 14-E-215 ,
 - 06-E-459
 - “14” or “06” indicates the year the estate file was created in the Clerk of Courts office not the year of death
 - “E” indicates it is an estate file
 - “215” or the “459” indicates the sequential number of the file
- Use “14-E” as you would the deed book and “215” as the deed page

YADKIN COUNTY, NC YR 2013 REQUESTED BY CCAMPBELL RUN 1/09/14 TIME 7:27:51 PAGE 1
 E W CASSTEVENS REECE MYRTLE C REECE MYRTLE C NBHD: 02H1 121678
 P.O. BOX 937 P.O. BOX 937 489800753880 ROUTE#:
 YADKINVILLE NC 27055 YADKINVILLE NC 27055 2045 HINSHAW RD
 1062729 1062729 4898 00 75 3880
 Plat Bk/Pg 1062729
 Bldg No. 1 Appraiser: Appr Date: 1/01/2005 APPR: APPR DT: 10/01/1998 LAND VALUE 328,635 131,753
 Imp Desc: 01 BASE RESIDENCE Eff Yr: 1942 USE CODE: MISC VALUE 2,900 2,900
 Grade : D FAIR QUALITY Act Yr Bt: 1942 DISTRICT: 120 YADKINVILLE-FIR BLDG VALUE 3,823 3,823
 1.00 Stories/ 4 Rms/ 3 Bed/ 1.5 Bth/ HBth NBHD: 02H1 HALF MILE HOG FARM TOTAL VALUE 335,358 138,476
 Finished Area: 1,172.00 ASV SqFt 286.14 Sales SqFt 2012 PRIOR YEAR 368,800 171,918

COMPONENT	TYPE/CODE/DESC	PCT	UNITS	RATE	STR#	STR%	SIZ%	HGT%	PER%	CDS%	COST	%CMLP
AC BUF	BASEMENT UNFINISHED	76	890.72	12.60			93.00				10,437	
AC EPF	ENCLOSED FINISHED PO	100	224.00	44.25			98.00				9,713	
MA 01	BASE RESIDENCES	100	1172.00	86.60	1.00		93.00				94,390	
- AR 4	WINDOW UNITS	100	1172.00	.00			93.00				0	
- DS RC04	GABLE RC04	100	1.00	.00							0	
- DS RM01	ASPHALT SHINGLE RM01100	100	1.00	.00							0	
- EW 13	VINYL ADJ	100	1172.00	.00			93.00				0	
- FN 03	BRICK	100	1172.00	.00							0	
- FP 011	OPENINGS	100	1.00	2000.00							2,000	
- FS 011	STACKS	100	1.00	2000.00							2,000	
- HT 01	NONE	100	1172.00	3.75-			93.00				4,086-	
- PL RS0212	FULL BATH 1 HALF B100	100	1.00	5500.00							5,500	

RCN...							100	x			119,953	
QUAL..	QG D						85.00	x			101,960	
DEPR..	PR						75.00	-	76,470			
ADDL..	CON						20.00	-	20,392		96,862	T
--FMV...	MK 02H1						75.00	x			3,823	EXCD:

PROPERTY NOTES:

BOOK	PAGE	DT	DATE	QS	SALES PRICE
05-E	069	EST	12/31/2004	E	
105	357	UNK	1/01/1970		
PERMIT NO					
		TYPE	DATE		

IN CONCLUSION!

- The best legal advice to give someone:
 - (1) Tell them to go see a lawyer
 - (2) Tell them you can't give them legal advice.

