

## What's My Lane? Understanding Family Settlement Agreements

| Type               | I.<br><b>CLERK ONLY*</b><br>Original, exclusive jurisdiction<br>G.S. 28A-2-204(a)1,2, 3<br>G.S. 28A-2-10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | II.<br><b>CLERK + SUPERIOR CT</b><br>Clerk has non-exclusive jurisdiction<br>G.S. 28A-2-204(a)(4)<br>G.S. 28A-2-10                                                                                                                                                                                                                                                                                                                                                                                                                                                          | III.<br><b>SUPERIOR CT ONLY</b><br>G.S. 28A-2-204(c)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | IV.<br><b>SUPERIOR CT</b><br>"MIXED BAG"<br>G.S. 28A-2-206(f), (g), (h), (i)                                                                                                                                                                                                                                                 | V.<br><b>COMMON LAW FAMILY SETTLEMENT AGREEMENT</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| Can Clerk approve? | YES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | YES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | NO                                                                                                                                                                                                                                                                                                                           | NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Applies To         | <ol style="list-style-type: none"> <li>1. Probate of wills.</li> <li>2. Granting and revoking of letters testamentary and letters of administration, or other proper letters of authority.</li> <li>3. Determination of the elective share for a surviving spouse as provided in G.S. 30-3.1.</li> </ol> <p><b>PLUS</b><br/>*All estate proceedings (matters "initiated by petition related to the administration, distribution, or settlement of an estate") except those listed in (a)(4). Includes:</p> <ul style="list-style-type: none"> <li>• Contested proceedings for spouse's and/or child's allowances. G.S. 30-20; -23.1; -27.</li> <li>• Disbursements from estate during a caveat. G.S. 31-36</li> <li>• Review of PR's proposed renunciation. G.S. 31B-1.2(a)</li> <li>• Approval of PR transfer to UTMA if over \$10,000. G.S. 33A-6</li> <li>• Determination of interest owed by PR to beneficiary who receives pecuniary amount. G.S. 37A-2-201(3)</li> </ul> | <ol style="list-style-type: none"> <li>1. Ascertain heirs or devisees.</li> <li>2. Approve settlement agreements per G.S. 28A-2-10.</li> <li>3. Determine questions of construction of wills.</li> <li>4. Determine priority among creditors.</li> <li>5. Determine whether a person is in possession of estate property.</li> <li>6. Order recovery of estate property.</li> <li>7. Determine the existence or nonexistence of <i>any immunity, power, privilege, duty, or right</i>.</li> </ol> <p>Includes Ch. 31A actions barring rights of spouse, parent, slayer.</p> | <ol style="list-style-type: none"> <li>1. Actions by/against creditors or debtors of an estate, except as provided in Article 19 of Ch. 28A.</li> <li>2. Claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence.</li> <li>3. Caveats, except as provided under G.S. 31-36.</li> <li>4. Proceeding to determine proper county of venue as provided in G.S. 28A-3-2.</li> <li>5. Recovery of property transferred or conveyed by a decedent with intent to hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b).</li> <li>6. Actions for reformation or modification of wills under Article 10 of G.S. Chapter 31.</li> </ol> | <p>Combination of:</p> <ul style="list-style-type: none"> <li>• <b>Lane I</b> if claims are joined or consolidated with other claims.</li> <li>• <b>Lane II</b> if filed in/transferred to Superior Court.</li> <li>• <b>Lane III</b></li> <li>• <b>Other controversies Superior Court has jurisdiction over.</b></li> </ul> | <p>Settlement agreements that</p> <ul style="list-style-type: none"> <li>• Are between beneficiaries that alter testator's disposition.</li> <li>• Do not result from a caveat.</li> <li>• May or may not be approved by superior court.</li> <li>• Meet the common-law requirements: <ol style="list-style-type: none"> <li>1. All beneficiaries are parties.</li> <li>2. Rights of creditors not impaired.</li> <li>3. Fairly made.</li> <li>4. Adequate consideration (bona fide controversy).</li> <li>5. Protects rights of minors and incompetent adults.</li> </ol> </li> </ul> |