Substantive Law Relating to Estate Planning in South Carolina

Melody J. E. Breeden  
Turner Padget Graham & Laney, PA

Post Office Box 2116

Myrtle Beach, SC 29578

(843) 213-5530

[MBreeden@Turnerpadget.com](mailto:MBreeden@Turnerpadget.com)

1. The South Carolina Probate Code governs wills in South Carolina (S.C. Code Ann. §§ 62-1-101 to 62-8-403).
2. Capacity to Make a Will.
3. Before you can even begin drafting any estate planning documents, you must first asses the individual’s capacity.
4. Any individual who is of sound mind and who is not a minor may make a will. S.C. Code Ann. § 62-2-501.
5. A minor cannot create a will. In South Carolina, a person is not a minor if the person is either:
6. 18 years of age or older.
7. Emancipated by court order.
8. Legally married.

(S.C. Code §§ 62-1-201(27) and 62-2-501).

1. For the testator to have the mental capacity sufficient to make a will, the testator must understand:
   1. The nature and extent of the testator's assets.
   2. The object of the testator's bounty.
   3. How the testator wants assets to pass at death.

(*In re Washington's Estate*, 46 S.E. 2d 287, 289 (S.C. 1948)).

1. Execution Requirements of a Will.
2. The will must be signed by at least two individuals that witnessed either the signing of the will or the testator's acknowledgment of the signature of the will (S.C. Code Ann. § 62-2-502(3)). It is preferred that all witnesses and the testator are in the same room at the same time while the will is being executed.
3. A will must be signed by the testator or signed in the testator's name by some other person in the testator's presence and by the testator's direction (S.C. Code Ann. § 62-2-502(2)).
4. A subscribing witness receiving a gift under the will (or the spouse or issue of which receives a gift under the will) can attest or prove a will. However, unless there are two additional disinterested witnesses, the interested witness or the interested witness's spouse or issue generally cannot take under the will anything more than that to which the person is entitled in intestacy (S.C. Code Ann. § 62-2-504). Therefore, it is a better practice to use two disinterested witnesses to any interested witness or that witness's spouse or issue losing a benefit under the will.
5. A notary is not required for a will to be valid, but is required to make the will self-proving (S.C. Code Ann. § 62-2-503). It is advisable to make a will self-proving at the time of execution.
6. A valid will does not require a self-proving affidavit. However, with a few exceptions, a will that includes this affidavit may be admitted to probate without having to submit additional proof that the will was properly executed. (S.C. Code Ann. § 62-2-503). It is advisable to include a self-proving affidavit with every South Carolina will. A will without the attestation and self-proving affidavit may require an additional sworn statement or affidavit from a person with knowledge of the circumstances of the will's execution to probate the will (S.C. Code Ann. § 62-3-303(c)).
7. A subscribing witness receiving a gift under the will (or the spouse or issue of which receives a gift under the will) can attest or prove a will. However, unless there are two additional disinterested witnesses, the interested witness or the interested witness's spouse or issue generally cannot take under the will anything more than that to which the person is entitled in intestacy (S.C. Code Ann. § 62-2-504). Therefore, it is a better practice to use two disinterested witnesses to any interested witness or that witness's spouse or issue losing a benefit under the will.
8. The attestation clause states that the will was signed or acknowledged by the testator in the presence of the witnesses and that the testator declared to each of the witnesses that the document is the testator's will (S.C. Code Ann. § 62-2-503). It is common practice in South Carolina to include the following attestation, along with a self-proving clause, as provided by statute:

I, [TESTATOR NAME], the testator, sign my name to this instrument this [DAY] day of [MONTH], [YEAR], and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older (or if under the age of eighteen, am married or emancipated as decreed by a family court), of sound mind, and under no constraint or undue influence.

We, [FIRST WITNESS NAME] and [SECOND WITNESS NAME], the witnesses, sign our names to this instrument, and at least one of us, being first duly sworn, does hereby declare, generally and to the undersigned authority, that the testator signs and executes this instrument as the testator's last will and that the testator signs it willingly (or willingly directs another to sign for the testator), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older (or if under the age of eighteen, was married or emancipated as decreed by a family court), of sound mind, and under no constraint or undue influence.

1. South Carolina permits holographic or handwritten wills. However, to be valid, holographic wills must meet the statutory requirements for a will (S.C. Code Ann. §§ 62-2-502 and 62-2-505).
2. South Carolina does not recognize oral wills. All wills must be in writing. (S.C. Code Ann. § 62-2-502).
3. A contract to make, revoke, or to not revoke a will, if the will is executed after January 1, 2014, can only be established by either:
   1. A provision of the will stating the material provisions in the contract.
   2. An express reference in the will to a contract and extrinsic evidence proving the terms of the contract.
   3. A writing signed by the decedent showing the contract and extrinsic evidence proving the terms of the contract.

(S.C. Code Ann. § 62-2-701).

The execution of joint and mutual wills does not create a presumption of a contract to not revoke the will or wills (S.C. Code Ann. § 62-2-701).Contracts to make, revoke, or to not revoke wills are rarely used in South Carolina.

1. Rights of Individuals to Inherit.
2. Surviving Spouse. A testator cannot disinherit a surviving spouse without a valid waiver of spousal rights in a prenuptial agreement, postnuptial agreement, or waiver, signed by the waiving spouse (S.C. Code Ann. § 62-2-204).

Without a valid waiver, the surviving spouse has an elective share right to claim against the probate estate of the decedent (S.C. Code Ann. § 62-2-201). The surviving spouse of a decedent that was a South Carolina resident can claim one-third of the decedent's probate estate as the surviving spouse's elective share (S.C. Code Ann. §§ 62-2-201 to 62-2-207).

A revocable trust is illusory for purposes of calculating a surviving spouse's elective share and the assets in the trust are included to determine the spouse's elective share (S.C. Code Ann. §§ 62-2-202(b) and 62-7-401(c)). However, the spouse is charged for gifts received because of the decedent's death (including those from the decedent's revocable trust in calculating the elective share) (S.C. Code Ann. § 62-2-207).

1. If the decedent was not a South Carolina resident, the surviving spouse's elective share for South Carolina property is governed by the law of the decedent's domicile (S.C. Code Ann. § 62-2-201(b)).
2. In certain cases, a spouse married to the testator may have certain rights to claim an intestate share of the decedent's estate.
3. The drafting attorney should ensure that the testator is aware of the surviving spouse's rights, if applicable, and draft accordingly.
4. Effect of Divorce

Upon the entry of a final decree of divorce or annulment, the former spouse is not considered a surviving spouse (unless the spouses remarry and are married at the decedent's death). On divorce or annulment, provisions in a testator's will that affect the testator's former spouse also are void. The former spouse is treated as if the spouse predeceased the testator. (S.C. Code Ann. §§ 62-2-507 and 62-2-802).

However, many attorneys recommend that the testator execute a new will after a divorce is final or in anticipation of a pending divorce.

1. Effect of Marriage After Execution of Will

If a testator fails to provide by will for the testator's surviving spouse that married the testator after the execution of the will, the omitted spouse can claim the omitted spouse's elective share of the probate estate, unless either of the following apply:

* 1. It appears from the will that the omission was intentional.
  2. The testator provided for the surviving spouse by transfer outside the will and the testator intended that the transfer be instead of a devise in the will.

(S.C. Code Ann. § 62-2-301).

The surviving spouse's statutory share of the probate estate is one-half of the probate estate if there are surviving issue and all of the probate estate if there are no issue (S.C. Code Ann. § 62-2-102).

To make this claim, the omitted spouse must file and serve a summons and petition within the statutory deadlines (S.C. Code Ann. § 62-2-301(c)).

However, the surviving spouse can waive this claim in a prenuptial agreement, just as the spouse can waive an elective share claim (S.C. Code Ann. § 62-2-204).

Many attorneys recommend that the will be updated by the testator after marriage, so that the testator's intentions to provide or not provide for a surviving spouse are clear.

1. Rights of Children.

There is no right of a child to inherit from a parent unless either:

1. The parent's estate is an intestate estate (S.C. Code Ann. § 62-2-103(1)). For more information on intestacy, see [Rules of Intestacy](#3).
2. In certain cases, the child was born after the testator executed the testator's will.
3. After-Born Child

If a testator fails to provide in the testator's will for any children born or adopted after the date of execution of the will, the omitted child can claim the omitted child's statutory share of the estate, unless any of the following apply:

* 1. It appears from the will that the omission was intentional.
  2. When the will was executed, the testator devised substantially all of the testator's estate to the testator's spouse.
  3. The testator provided for the child by transfer outside the will and the testator intended that the transfer be in lieu of a devise in the will.

(S.C. Code Ann. § 62-2-302).

To make this claim, the omitted child must file and serve a summons and petition within the statutory deadlines (S.C. Code Ann. § 62-2-302(d)).

The testator should review and may decide to update the testator's will when life-changing events occur, such as the birth or adoption of a child. Many attorneys draft wills to expressly include after-born heirs in the definition of heirs. Counsel should discuss this issue with the testator and draft accordingly.

1. Personal Property Memorandum. A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will. This list or statement may not include money or property used in trade or business. The list or statement must be either in the testator's handwriting or signed by the testator. It must also describe the items and beneficiaries with reasonable certainty. The writing may be prepared before or after the testator executes the will. (S.C. Code Ann. § 62-2-512). Testator's frequently use this type of writing with a will. This writing is typically referred to as a personal property memorandum
2. No-Contest Clause. No-contest clauses (also known as *in terrorem* clauses) are provisions in a will which penalize an interested party contesting the will or institutes proceedings related to the estate. These clauses generally provide that the interested party forfeits the interested party's bequest if the contest or proceeding is unsuccessful. No-contest clauses are permitted in South Carolina but are unenforceable if probable cause exists for instituting the proceeding (S.C. Code Ann. § 62-3-905). In South Carolina, a no-contest provision is often included in a will to deter challenges to a testator's dispositive plan.
3. Rule Against Perpetuities. A nonvested property interest is invalid unless one of the following applies:
4. When the interest is created, it vests or terminates no later than 21 years after the last life in being at the creation of the interest.
5. The interest vests or terminates within 90 years after its creation.

(S.C. Code Ann. § 27-6-20(A)).

1. Naming a Personal Representative.
2. The personal representative is the person in charge of the South Carolina estate. A personal representative includes an executor, administrator, successor personal representative, special administrator, and any person performing substantially the same function under applicable law (S.C. Code Ann. § 62-1-201(33)).
3. A person may not serve as personal representative if any of the following apply:
   1. The person is under age 18.
   2. The court finds the person to be unsuitable in formal proceedings.
   3. The proposed personal representative is a corporation and the corporation is not doing business in South Carolina (a corporation includes an officer, employee, or agent of a foreign corporation, if the person is acting on behalf of the corporation).
   4. The person is a probate judge and the estate is the estate of any person within the probate judge's jurisdiction that is not a family member.

(S.C. Code Ann. §62-3-203(e)).

1. Compensation of Personal Representative. Unless otherwise approved by the probate court, the personal representative receives a fee for the personal representative's services that does not exceed the total of both:
2. Five percent of the appraised value of the personal property plus the sales proceeds of real property.
3. Five percent of the income earned by the probate estate.

(S.C. Code Ann. §§ 62-3-719(a) and 62-3-719(b)).

The parties can contract for a different amount of fees and the document can specify a different fee or no fee at all (S.C. Code Ann. § 62-3-719(c)). If there is more than one personal representative, the fee is split among them. The fee is normally split evenly, but the probate court can apportion the fee. (S.C. Code Ann. § 62-3-719(e)).

Most corporate fiduciaries have published fee schedules and may not agree to serve unless the fee schedules are expressly incorporated into the will. It is common for a South Carolina will to contain language regarding the fee for the personal representative.

1. Successor Personal Representative. If the original named personal representative does not wish to serve, ceases to serve, or cannot serve, the successor personal representative named in the will may serve (S.C. Code Ann. §§ 62-2-601 and 62-3-613).

The priority of appointment as personal representative is:

1. The person named as personal representative in the will or the person nominated by a power granted in the will.
2. The surviving spouse of the decedent that is a devisee. A devisee is any person designated to receive a devise (a testamentary disposition) in a will or trust (S.C. Code Ann. §§ 62-1-201(7) and 62-1-201(8)).
3. Other devisees of decedent.
4. The surviving spouse of the decedent (even if not a devisee).
5. Other heirs of the decedent.
6. 45 days after death, any creditor of the decedent that properly presents a creditor's claim under the South Carolina Code Section 62-3-804.
7. Four months after death, on application of the South Carolina Department of Revenue, a person suitable to the court.

(S.C. Code Ann. § 62-3-203).

Unless the decedent expresses a contrary intent in the decedent's Will, a person with priority to act under the statute may nominate another person to serve as personal representative. That nominated person has the same priority as the person making the nomination. (S.C. Code Ann. § 62-3-203(a)(8)).

1. Co-Personal Representatives. Unless the will provides otherwise, if two or more persons are appointed co-representatives, they must act jointly except in certain circumstances, such as:
2. When any co-representative receives and receipts for property due the estate.
3. When emergency action is necessary to preserve the estate and the agreement of all co-representatives cannot readily be obtained in reasonable time.
4. When a co-representative is delegated to act for the others (by written, signed notice setting out the duties delegated and filed with the court).
5. Beneficiary Does Not Survive (Lapse)

Unless a contrary intent appears in the will, if a beneficiary does not survive the testator (or is treated as if the beneficiary predeceased the testator), the devise to that beneficiary:

* 1. Does not lapse if the devisee was testator's great-grandparent or a lineal descendant of a great-grandparent. In this case, the devise is distributed to the beneficiary's issue surviving the testator as follows:
     1. if the surviving issue are all of the same degree of kinship to the devisee, they take equally; or
     2. if the surviving issue are of unequal degree of kinship to the devisee, then those of more remote degree take by representation.

(S.C. Code Ann. §§ 62-2-106 and 62-2-603(A)).

* 1. Lapses for any devisee that was not the testator's great-grandparent or a lineal descendant of a great-grandparent and is not a residuary devisee. In this case, the property passes as part of the residue. (S.C. Code Ann. § 62-2-604(A)). For a residuary devisee, if the residue is devised to two or more persons, the share of the residuary devise that fails passes to the other residuary devisee or devisees in proportion to their interests in the residue (S.C. Code Ann. § 62-2-604(B)).

Attorneys often include language, such as "if [he/she] shall survive me," to clarify that the devise to a particular beneficiary is contingent on that beneficiary's survival, and that the assets do not pass to the heirs of the devisee if the devisee does not survive.

1. Gift Not Owned by Testator at Death (Ademption)

In South Carolina, if the decedent, at the time of the decedent's death, does not own the specific asset devised, the devise generally adeems (that is, is not made), except as otherwise provided by statute (for example, where the beneficiary may receive certain sums or property the testator received for the sale, condemnation, or exchange of, or from insurance payments on, the devised property) (S.C. Code Ann. §§ 62-2-605 and 62-2-606).

1. Not Enough Assets (Abatement)

When there are not enough assets in the estate to pay all obligations and dispositions under the will and any claims or statutory shares, the various bequests in the will abate (are reduced or eliminated) for payment. Unless the will expresses an order of abatement or if the testamentary plan can otherwise be defeated, shares of distributees abate in the following order, without any preference between real and personal property:

* 1. Property not disposed of by the will.
  2. Residuary devises.
  3. General devises.
  4. Specific devises.

(S.C. Code Ann. § 62-3-902).

1. Gifted Property Encumbered

A specific devise passes subject to any mortgage, pledge, security interest, or other lien existing at the date of death without right of exoneration, regardless of a general directive in the will to pay all debts (S.C. Code Ann. § 62-2-607). If the testator wants a debt paid from other estate assets before distribution of the devise, the testator must specifically say so in the will.

1. Simultaneous Death

Unless the will provides otherwise, beneficiaries generally must survive the testator by 120 hours to receive their bequests, subject to certain limited exceptions (S.C. Code Ann. §§ 62-1-502 and 62-1-506).

Many attorneys include a provision in the will dealing with simultaneous deaths and specifying the rules that apply to determine which person died first.

1. Intestacy-The intestate share of the surviving spouse is:
2. The entire intestate estate, if there are no surviving issue of the decedent.
3. One-half of the entire intestate estate, if there are surviving issue.

(S.C. Code Ann. § 62-2-102).

B. That part of the intestate estate not passing to the surviving spouse or the entire intestate estate, if there is no surviving spouse, passes to the following persons, in the following order:

1. To the issue of the decedent as follows:
   1. equally, if they are the same degree of kinship; and
   2. those of more remote degree of kinship take by representation, if they are of an unequal degree of kinship.
2. If there are no surviving issue, to the decedent's parents equally.
3. If there are no surviving issue or parents, to the issue of the parents or either of them by representation.
4. If there are no surviving issue, parents, or issue of parents, but the decedent is survived by one or more grandparents or issue of the grandparents, half of the estate passes to the paternal grandparents, if both survive, or to the surviving paternal grandparent or to the issue of the paternal grandparents if both are deceased and the other half passes to the maternal relatives in the same way. If there are no surviving grandparents or issue of grandparents on one side of the family, then the entire estate passes to the side of the family with survivors. If there are no surviving grandparents or issue of grandparents, the statute provides for additional intestate distributions.

(S.C. Code Ann. §§ 62-2-103 and 62-2-105).

Many attorneys draft the will with contingent provisions intended to distribute all of the testator's property (that is, so that no property passes in intestacy).

1. Out of State Wills. A written will is valid if it complies with the laws at the time of execution of the place where either:
   1. The will is executed.
   2. The testator is domiciled at the time of execution or at the time of death.

(S.C. Code Ann. § 62-2-505).

It is advisable to have a South Carolina attorney review an out-of-state will that is meant to be probated in South Carolina. It may be appropriate to prepare a South Carolina will for a testator that has moved to South Carolina from out of state. It is easier to probate and administer a South Carolina will in South Carolina rather than administering and probating an out-of-state document.

1. Trusts.
2. The South Carolina Trust Code, Sections 62-7-101 to 62-7-1106 of the South Carolina Code Annotated, governs South Carolina trusts.

The South Carolina Probate Courts generally have exclusive original jurisdiction over trusts (S.C. Code Ann. §§ 62-1-302(a)(3) and 62-1-302 (c)). The probate courts must remove certain matters relating to trusts to the circuit court, on motion by a party, or by the court on its own motion, made within 10 days after all responsive pleadings are filed (S.C. Code Ann. § 62-1-302(d)).

1. In South Carolina, the minimum age to make a trust is the same minimum age that is required to make a will (S.C. Code Ann. § 62-7-601). A person not a minor may make a will (S.C. Code § 62-2-501). For these purposes, a minor is anyone under age 18, except for those persons that are either:
   * 1. Emancipated by Order of Family Court.
     2. Married.

(S.C. Code Ann. § 62-1-201(27)).

1. In South Carolina, the same mental capacity required to make a will is required to make a trust (S.C. Code Ann. § 62-7-601). In South Carolina, a person of sound mind may make a will (S.C. Code Ann. § 62-2-501). The capacity needed to make a will is that the testator must understand:
2. The nature and extent of the testator's assets.
3. The object of the testator's bounty.
4. How the testator wants assets to pass at death.

*(In re Washington's Estate*, 212 S.C. 379, 385-6, 46 S. E. 2d 287, 289 (S.C. 1948)).

1. In South Carolina, a trust must have a trustee (S.C. Code Ann. § 62-7-401).
2. Beneficiary Requirements
3. In South Carolina, a trust must have a definite beneficiary unless it is a:
   * + - 1. Charitable trust.
         2. Trust for the care of an animal.
         3. Trust for a noncharitable purpose as provided in Section 62-7-409 of the South Carolina Code Annotated.

(S.C. Code Ann. §§ 62-7-402, 62-7-408, and 62-7-409).

1. Trust Property Requirements
2. A trust must be funded with assets (S.C. Code Ann. § 62-7-401). In South Carolina, the initial funding amount can typically be as small as $5.00. The trustee only has control over the property that has been transferred to the trustee by deed or otherwise (for example, the trust can be funded during the settlor's lifetime by an assignment of assets and at the settlor's death by transfers by will or beneficiary designation).
3. Unless the trust terms expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust (S.C. Code Ann. § 62-7-602). This section does not apply to trusts created before the effective date of this statute, January 1, 2014, which are irrevocable unless the trust provided for a power of revocation (S.C. Code Ann. § 62-7-602, cmts.).
4. South Carolina permits oral trusts for personal property, which may be established by clear and convincing evidence (S.C. Code Ann. § 62-7-407). However, a trust for real estate must be in writing (S.C. Code Ann. § 62-7-401(a)(2)).
5. Attorneys generally create written trust agreements rather than oral ones for clarity and if the trust holds real property interests.
6. If the trust agreement is in writing, the trust may be signed by the settlor or in the settlor's name by some other person at the settlor's direction and in the settlor's presence (S.C. Code Ann. § 62-7-402(b)).
7. Trustee's Signature. Although it is standard practice in South Carolina for the trustee to sign the trust instrument, there is no requirement in South Carolina for the trustee to sign the trust instrument.
8. Witness Requirements. Although it is standard practice in South Carolina for the trust agreement to be witnessed by two witnesses, there is no witness requirement for a trust in South Carolina.
9. Notary Requirements. Although it is standard practice in South Carolina for a trust agreement to be notarized, there is no notary requirement for a trust in South Carolina.
10. Qualification as Trustee. There are no statutory requirements to serve as a trustee in South Carolina. However, trustees may be removed if the trustee is unfit, unwilling, or persistently fails to administer the trust effectively (S.C. Code Ann. § 62-7-706(b)).
11. The terms of the testamentary trust under the testator's will may set out the way in which the named trustee accepts the role of trustee. If the trust terms are silent or not exclusive, the trustee accepts the trusteeship by either:
    1. Accepting delivery of the trust property.
    2. Exercising powers or performing duties as trustee.
    3. Otherwise indicating acceptance of the trusteeship.

(S.C. Code Ann. § 62-7-701).

1. If a designated trustee does not accept the trusteeship within a reasonable time after knowing of the designation, the person is deemed to have rejected the trusteeship. A person designated as trustee may, without accepting the trusteeship, do the following:
   1. Act to preserve the trust property, but then, within a reasonable time after acting, send a rejection of the trusteeship to the settlor, or if the settlor is dead or lacks capacity, to a qualified beneficiary.
   2. Inspect or investigate trust property to determine potential environmental liability or for any other purpose.

(S.C. Code Ann. § 62-7-701).

1. Compensation of Trustee. If the testamentary trust terms do not specify trustee compensation, a trustee is entitled to reasonable compensation under the circumstances (S.C. Code Ann. § 62-7-708(a)). If the testamentary trust terms specify the trustee's compensation, the trustee is entitled to the compensation specified. However, the court may allow more or less compensation if either:
   * 1. The trustee's duties are substantially different than the duties contemplated when the trust was created.
     2. The specified compensation is unreasonably high or low.

(S.C. Code Ann. § 62-7-708(b)) .

Most corporate trustees have published fee schedules and generally do not serve unless these schedule terms are incorporated into the testamentary trust.

1. Failure of Named Trustee.
2. If the first named trustee cannot serve, the named successor serves. If there is no named successor trustee willing and able to act, then a trustee vacancy exists. A trustee vacancy occurs if:
   1. A person designated as trustee rejects the trusteeship.
   2. A person designated as trustee does not exist or cannot be identified.
   3. A trustee resigns.
   4. A trustee is disqualified or removed.
   5. A trustee dies.
   6. A guardian or conservator is appointed for an individual trustee. (S.C. Code Ann. § 62-7-704(a)).
3. The testamentary trust terms may state how to fill a trustee vacancy. A vacancy in the trusteeship of a noncharitable trust must be filled in the following order of priority:
   1. By a person designated in the testamentary trust to act as successor trustee.
   2. By a person appointed by unanimous agreement of the qualified beneficiaries.
   3. By a person appointed by the court.

(S.C. Code Ann. § 62-7-704(c)).

1. A qualified beneficiary is a living beneficiary that on the date of the beneficiary's qualification is determined, is either a distributee or permissible distributee:
   1. Of income or principal.
   2. If the interests of the above distributees terminated on that date but the termination of those interests did not terminate the trust.
   3. Of trust income or principal if the trust terminated on that date. (S.C. Code § 62-7-103(12)).
   4. Because a testamentary trust must have a trustee, if there is no trustee, the probate court can fill a vacancy in the trusteeship and appoint a successor trustee (S.C. Code Ann. §§ 62-7-704(b) and 62-7-704(c)).
2. Multiple Trustees. Unless the will provides otherwise:
3. If there are two co-trustees, the trustees must agree on the proposed action.
4. If there are more than two co-trustees unable to reach a unanimous decision, they may act by majority decision.
5. If a vacancy arises, the remaining co-trustees may act for the trust. (S.C. Code Ann. §§ 62-7-703(a) and 62-7-703(b)).
6. A co-trustee must participate in the trustee's functions unless the co-trustee is not available due to absence, illness, disqualification under other law, temporary incapacity, or proper delegation of the function to another trustee (S.C. Code Ann. § 62-7-703(c)). If a co-trustee is unavailable and prompt action is necessary, the remaining co-trustee or a majority of the remaining co-trustees may act for the testamentary trust unless the will provides otherwise (S.C. Code Ann. § 62-7-703(d)).
7. Incorporation by Reference of Trustee Powers. Section 62-7-815 provides that the powers of the trustee include:
8. Those found in the trust agreement.
9. Except as limited by the trust agreement, all powers over the trust property that an unmarried, competent owner has over individually owned property.
10. Any other powers appropriate to achieve the proper administration of the trust and any other powers conferred by Part 8 of the South Carolina Probate Code. (S.C. Code Ann. § 62-7-815).
11. Specific powers are granted to a trustee by statute and do not need to be specifically listed in the trust agreement, if the settlor wishes to incorporate them (S.C. Code Ann. § 62-7-816). However, in South Carolina, most trust agreements list in detail the powers of the trustee regarding the administration of real property, personal property, investment assets, bank accounts, and businesses so third parties can more easily see whether the trustee is authorized to take a certain action related to trust property.
12. Governing Law. The meaning and effect of the terms of a trust are determined by either:
13. The law of the jurisdiction designated in the terms of the trust instrument.
14. If the trust instrument does not designate the law of a jurisdiction, the law of the jurisdiction having the most significant relationship with the matter at issue. (S.C. Code Ann. § 62-7-107).
15. Beneficiary Does Not Survive (Lapse).
16. Unless the trust agreement provides otherwise, if the beneficiary of a revocable trust is a great-grandparent or a lineal descendant of a great-grandparent of the settlor and is dead when the trust is executed, fails to survive the settlor, or is treated having predeceased the settlor, the issue of the deceased beneficiary surviving the settlor take in place of the deceased beneficiary as follows:
    1. If they are all of the same degree of kinship, they take equally.
    2. If they are of an unequal degree of kinship, then those of more remote degree take by representation (that is, the predeceased beneficiary's descendants take the predeceased beneficiary's share).

(S.C. Code Ann. § 62-7-606(A)).

1. Except as provided above, if the disposition of property under a revocable trust fails for any reason, the property becomes part of the residue of the trust. Except as provided above, if the residue of a revocable trust is to be distributed to two or more persons and the share of a residuary beneficiary fails, that share passes to the other residuary beneficiary or beneficiaries in proportion to their interests. (S.C. Code Ann. §§ 62-7-606(B) and 62-7-606(C)).
2. Gift Not Owned By Settlor at Death (Ademption). If the specific asset devised is no longer owned by the settlor at the time of death, the bequest lapses (S.C. Code Ann. §§ 62-2-605, 62-2-606, and 62-7-112).
3. Not Enough Assets (Abatement). Unless the trust instrument expresses an order of abatement, if there are not enough assets, shares of beneficiaries abate as follows, without any priority between real and personal property:
4. Property not disposed of by the trust.
5. Residuary devises.
6. General devises.
7. Specific devises.

(S.C. Code Ann. §§ 62-3-902 and 62-7-112).

1. Gifted Property Encumbered. A specific devise passes subject to any mortgage, pledge, security interest, or other lien existing at the date of death without right of exoneration regardless of a general directive in the trust to pay all debts (S.C. Code Ann. §§ 62-2-607 and 62-7-112). If the settlor wants the debt paid from other trust assets before distribution of the gift, it must be specifically stated in the trust instrument.
2. Effect of Divorce. Unless the trust instrument expressly provides otherwise, if the settlor is divorced or the marriage is annulled after the creation of a revocable trust, generally all provisions of the trust that affect the former spouse are revoked, including the fiduciary nominations, bequests, and grants of powers of appointment. If the statute prevents property from passing to the former spouse, the former spouse is treated as having predeceased the settlor. (S.C. Code Ann. § 62-7-607).
3. Simultaneous Death. Unless one of the six exceptions provided in the statute apply, survivorship by 120 hours is required for a beneficiary to be deemed to have survived the settlor (S.C. Code Ann. § 62-1-506). The most common exception listed in the statute is when the governing instrument contains language which specifically deals with simultaneous deaths and creates rules which apply when the order of death of the settlor and beneficiaries or of the beneficiaries is not known (S.C. Code Ann. § 62-1-506(1)). The trust instrument may include a provision dealing with simultaneous deaths and specifying the rules that apply to determine which person died first.