

1982 WL 189454 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 6, 1982

***1 RE: Will of Spartan D. Granger**

The Honorable Ralph W. Drake
Judge of Probate
Room 103
County Courthouse
Greenville, South Carolina 29600

Dear Judge Drake:

Thank you for your letter of September 2, 1982, concerning the above. You have asked this office for its advice whether certain legacies which have lapsed because of death of the legatees are to be distributed in accordance with the residuary clause of the will or whether the lapsed shares become intestate property. You are advised that the lapsed legacies pass as intestate property.

In South Carolina the law is well settled that:

To the rule that a general residuary clause will carry lapsed or ineffectual bequests of personal property; and also devisees of real estate, there is the exception that lapsed or ineffectual legacies or devisees of a portion of the residuary's estate itself, where the residuary clause is to several devisees or legatees in common, do not inure to the benefit of the residuary legatees or devisees, but the interest of the deceased becomes intestate estate, and as such passes to the next of kin or heirs-at-law of the testator.

[Davis v. Davis](#), 208 S.C. 182, 185, 37 S.E.2d 530. In [Davis](#), the residuary clause was remarkably similar to that present in the Granger will. The clause contained the direction that the property may be 'equally divided' and that his nephews and niece 'share and share alike.' The Court concluded therein that the lapsed legacies became intestate property and did not pass to the remaining beneficiaries of the residuary clause.

This conclusion is supported in Coleman Karesh's writings on wills:

Although the probable intention of a testator is that where he has created a general residuary clause in favor of two or more persons he desires that the surviving beneficiaries shall take the whole, the law does not raise such a presumption, and in the case of a predeceasing beneficiary who takes individually and not as joint tenant or members of a class, and who is not affected by the anti-lapsed statute, and where there is no provision against lapse, his share lapses and becomes intestate property.

[Karesh On Wills](#), at 81. Therefore, according to the authorities cited, the legacies that were parcels of the residuary estate and that had lapsed, pass as intestate property.

Very truly yours,

Edwin E. Evans
Senior Assistant Attorney General

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