CHAPTER 30.1-06
SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

30.1-06-01. (2-301) Entitlement of spouse - Premarital will.

1. If the testator's surviving spouse married the testator after the testator executed a will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate the surviving spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised to a descendant of such a child or passes under section 30.1-09-05 or 30.1-09-06 to such a child or to a descendant of such a child, unless:
   a. It appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;
   b. The will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or
   c. The testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.
2. In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under section 30.1-09-05 or 30.1-09-06 to a descendant of such a child, abate as provided in section 30.1-20-02.

30.1-06-02. (2-302) Omitted children.

1. Except as provided in subsection 2, if a testator fails to provide in the will for any of the testator's children born or adopted after the execution of the will, the omitted afterborn or after-adopted child receives a share in the estate as follows:
   a. If the testator had no child living when the testator executed the will, an omitted afterborn or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.
   b. If the testator had one or more children living when the testator executed the will, and the will devised property or an interest in property to one or more of the then-living children, an omitted afterborn or after-adopted child is entitled to share in the testator's estate as follows:
      (1) The portion of the testator's estate in which the omitted afterborn or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.
      (2) The omitted afterborn or after-adopted child is entitled to receive the share of the testator's estate, as limited in paragraph 1, that the child would have received had the testator included all omitted afterborn and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.
      (3) To the extent feasible, the interest granted an omitted afterborn or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.
      (4) In satisfying a share provided by this subdivision, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the

maximum extent possible the character of the testamentary plan adopted by the testator.

2. Neither subdivision a nor subdivision b of subsection 1 applies if:
   a. It appears from the will that the omission was intentional; or
   b. The testator provided for the omitted afterborn or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.
3. If at the time of execution of the will the testator fails to provide in the will for a living child solely because the testator believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted afterborn or after-adopted child.
4. In satisfying a share provided by subdivision a of subsection 1 or subsection 3, devises made by the will abate under section 30.1-20-02.