

HOUSE BILL 1229

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6lr2382
CF SB 913

By: **Delegate Dumais**

Introduced and read first time: February 12, 2016

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Elective Share of Surviving Spouse**

3 FOR the purpose of repealing certain provisions of law relating to a surviving spouse
4 making an election to take a certain share of the net estate of the decedent instead
5 of the property left to the surviving spouse under the will; establishing the purposes
6 of this Act; providing that a surviving spouse may take a certain elective share
7 amount of a certain augmented estate; recodifying certain provisions of law relating
8 to the right of election of a surviving spouse and certain time limits to elect to take
9 an elective share; establishing certain procedures and a certain form for an election
10 to take an elective share; authorizing the waiver of a certain right of election;
11 requiring certain fiduciaries to deliver certain information and provide certain notice
12 relating to a certain elective share of a surviving spouse; requiring a certain trustee
13 to provide certain notice relating to the trust within a certain period of time;
14 establishing the priority to be used in determining the sources from which a certain
15 elective share amount is payable; establishing the manner of payment of a certain
16 elective share under certain circumstances; providing certain immunity for certain
17 payors and other third parties who make certain payments or transfers before
18 receiving notice of a certain election; establishing the effect of an election to take a
19 certain elective share on the rights of the surviving spouse under a certain will and
20 certain revocable trust; authorizing certain persons to petition the orphans' court to
21 modify certain calculations or sources of payment of a certain elective share;
22 establishing a certain rebuttable presumption relating to the exclusion of certain
23 property from a certain augmented estate; authorizing the orphans' court to consider
24 certain factors when determining whether to include certain property in the value of
25 a certain augmented estate or certain spousal benefits; requiring a surviving spouse
26 who has elected to take an elective share to be removed as personal representative
27 of the decedent's estate; providing that a personal representative is entitled to
28 certain reimbursement for certain commissions and attorney's fees in connection
29 with a certain action; defining certain terms; making stylistic changes; providing for
30 the application of this Act; and generally relating to the elective share of a surviving
31 spouse.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Estates and Trusts
3 The subtitle designation to be “Subtitle 2. Family Allowance; Dower and Curtesy”
4 immediately preceding Section 3–201; 6–306(a), and 7–603
5 Annotated Code of Maryland
6 (2011 Replacement Volume and 2015 Supplement)

7 BY repealing and reenacting, without amendments,
8 Article – Estates and Trusts
9 Section 3–201(a)
10 Annotated Code of Maryland
11 (2011 Replacement Volume and 2015 Supplement)

12 BY repealing
13 Article – Estates and Trusts
14 Section 3–203 through 3–208
15 Annotated Code of Maryland
16 (2011 Replacement Volume and 2015 Supplement)

17 BY adding to
18 Article – Estates and Trusts
19 Section 3–401 through 3–411 to be under the new subtitle “Subtitle 4. Elective Share
20 of Surviving Spouse”; and 14.5–604
21 Annotated Code of Maryland
22 (2011 Replacement Volume and 2015 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
24 That the Laws of Maryland read as follows:

25 **Article – Estates and Trusts**

26 Subtitle 2. Family Allowance [and Statutory Share of Surviving Spouse]; **DOWER AND**
27 **CURTESY.**

28 3–201.

29 (a) The surviving spouse is entitled to receive an allowance of \$10,000 for personal
30 use.

31 [3–203.

32 (a) In this section, “net estate” means the property of the decedent passing by
33 testate succession, without a deduction for State or federal estate or inheritance taxes, and
34 reduced by:

35 (1) Funeral and administration expenses;

1 (2) Family allowances; and

2 (3) Enforceable claims and debts against the estate.

3 (b) Instead of property left to the surviving spouse by will, the surviving spouse
4 may elect to take a one-third share of the net estate if there is also a surviving issue, or a
5 one-half share of the net estate if there is no surviving issue.

6 (c) The surviving spouse who makes this election may not take more than a
7 one-half share of the net estate.

8 (d) For the purposes of this section, the net estate and the property allocable to a
9 share of a surviving spouse shall be valued as of the date or dates of distribution.

10 (e) (1) For the purposes of this section, a surviving spouse who has elected to
11 take against a will shall be entitled to the surviving spouse's portion of the income earned
12 on the net estate during the period of administration based on a one-third or one-half
13 share, whichever is applicable.

14 (2) If one or more distributions have been made to a surviving spouse or
15 another person that require an adjustment in the relative interests of the beneficiaries, the
16 applicable share shall be adjusted.]

17 [3-204.

18 The right of election of the surviving spouse is personal to him. It is not transferable
19 and cannot be exercised subsequent to his death. If the surviving spouse is under 18 years
20 of age or under disability, the election may be exercised by order of the court having
21 jurisdiction of the person or property of the spouse or person under disability.]

22 [3-205.

23 The right of election of a surviving spouse may be waived before or after marriage by
24 a written contract, agreement, or waiver signed by the party waiving the right of election.
25 Unless it provides to the contrary, a waiver of "all rights" in the property or estate of a
26 present or prospective spouse, or a complete property settlement entered into after or in
27 anticipation of separation or divorce, is a waiver of any right to his family allowance as well
28 as to his elective share by each spouse in the property of the spouse, his right to letters
29 under § 5-104 of this article, and is an irrevocable renunciation of any benefit which would
30 pass to him from the other by intestate succession, by statutory share, or by virtue of the
31 provisions of a will executed before the waiver or property settlement.]

32 [3-206.

1 (a) (1) The election by a surviving spouse to take an elective share shall be
2 made within the later of:

3 (i) Nine months after the date of the decedent’s death; or

4 (ii) Six months after the first appointment of a personal
5 representative under a will.

6 (2) (i) Within the period for making an election, the surviving spouse
7 may file with the court a petition for an extension of time, with a copy given to the personal
8 representative.

9 (ii) For good cause shown, the court may extend the time for election
10 for a period not to exceed three months at a time.

11 (b) The surviving spouse may withdraw the election at any time before the
12 expiration of the time for making the election to take an elective share.]

13 [3–207.

14 (a) An election to take an elective share of an estate of a decedent shall be in
15 writing and signed by the surviving spouse or other person entitled to make the election
16 pursuant to § 3–204 of this subtitle, and shall be filed in the court in which the personal
17 representative of the decedent was appointed.

18 (b) The election may be in this form.

19 I, A. B., surviving spouse of C. D., late of the County (City) of, renounce
20 all provisions in the will of C. D. and elect to take my elective share of the decedent’s
21 estate.

22
23 (Signature)]

24 [3–208.

25 (a) (1) Upon the election of the surviving spouse to take the elective share of
26 the property of the decedent, all property or other benefits which would have passed to the
27 surviving spouse under the will shall be treated as if the surviving spouse had died before
28 the execution of the will.

29 (2) The surviving spouse and a person claiming through the surviving
30 spouse may not receive property under the will.

31 (b) (1) If there is an election to take an elective share, contribution to the
32 payment of it shall be prorated among all legatees.

1 (2) Instead of contributing an interest in specific property to the elective
2 share, a legatee or legatees, but not the personal representative, may pay the surviving
3 spouse in cash, or other property acceptable to the spouse, an amount equal to the fair
4 market value of the surviving spouse's interest in specific property on the date or dates of
5 distribution.

6 (3) Unless specifically provided in the will, a legatee is not entitled to
7 sequestration or compensation from another legatee, or from another part of the estate of
8 the decedent, except that an interest renounced by the surviving spouse and not included
9 in the share of the net estate received by the surviving spouse under this section may be
10 subject to sequestration for the benefit of individuals who are the natural objects of the
11 bounty of the decedent, in order to avoid a substantial distortion of the intended
12 dispositions of the testator.]

13 **SUBTITLE 4. ELECTIVE SHARE OF SURVIVING SPOUSE.**

14 **3-401.**

15 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
16 **INDICATED.**

17 **(B) "AUGMENTED ESTATE" MEANS THE VALUE OF THE GROSS ESTATE OF A**
18 **DECEDENT, REDUCED BY:**

19 **(1) FUNERAL AND ADMINISTRATION EXPENSES PAYABLE FROM THE**
20 **GROSS ESTATE OF THE DECEDENT;**

21 **(2) FAMILY ALLOWANCES PAYABLE FROM THE GROSS ESTATE OF THE**
22 **DECEDENT;**

23 **(3) ENFORCEABLE CLAIMS AND DEBTS AGAINST ANY PART OF THE**
24 **GROSS ESTATE OF THE DECEDENT;**

25 **(4) THE VALUE OF ANY ASSETS INCLUDED IN THE GROSS ESTATE OF**
26 **THE DECEDENT THAT WERE HELD IN A TRUST OF WHICH THE DECEDENT IS NOT A**
27 **SETTLOR;**

28 **(5) THE VALUE OF ANY REAL PROPERTY INCLUDED IN THE GROSS**
29 **ESTATE OF THE DECEDENT BY REASON OF THE DECEDENT'S RETENTION OF A LIFE**
30 **ESTATE IN THE REAL PROPERTY IF, AT THE TIME OF THE DECEDENT'S DEATH, THE**
31 **DECEDENT HELD NO POWER OF DISPOSITION OVER THE REAL PROPERTY; AND**

1 **(6) THE VALUE OF ANY REAL PROPERTY INCLUDED IN THE GROSS**
2 **ESTATE OF THE DECEDENT THAT IS NOT SUBJECT TO THE JURISDICTION OF THE**
3 **STATE.**

4 **(C) “GROSS ESTATE” MEANS THE FEDERAL GROSS ESTATE OF A DECEDENT,**
5 **AS DETERMINED UNDER SUBTITLE B OF THE INTERNAL REVENUE CODE, PLUS THE**
6 **VALUE OF ANY PROPERTY NOT INCLUDED IN THE FEDERAL GROSS ESTATE OF THE**
7 **DECEDENT THAT IS INCLUDED UNDER § 7-309(B)(6) OF THE TAX – GENERAL**
8 **ARTICLE.**

9 **(D) “PERSON RESPONSIBLE FOR FILING THE ESTATE TAX RETURN” MEANS**
10 **THE PERSON RESPONSIBLE FOR FILING A FEDERAL ESTATE TAX RETURN FOR A**
11 **DECEDENT UNDER § 6018 OF THE INTERNAL REVENUE CODE AND THE**
12 **REGULATIONS IMPLEMENTING THAT SECTION, REGARDLESS OF WHETHER A**
13 **FEDERAL OR STATE ESTATE TAX RETURN ACTUALLY IS REQUIRED TO BE FILED FOR**
14 **THE DECEDENT.**

15 **(E) “REVOCABLE” HAS THE MEANING STATED IN § 14.5-103 OF THIS**
16 **ARTICLE.**

17 **(F) “REVOCABLE TRUST OF THE DECEDENT” MEANS ANY TRUST OF WHICH**
18 **A DECEDENT WAS THE SETTLOR THAT WAS REVOCABLE BY THE DECEDENT PRIOR TO**
19 **THE DECEDENT’S DEATH OR INCAPACITY.**

20 **(G) “SETTLOR” HAS THE MEANING STATED IN § 14.5-103 OF THIS ARTICLE.**

21 **(H) “SPOUSAL BENEFITS” MEANS THE AGGREGATE VALUE OF PROPERTY**
22 **PASSING TO OR IN TRUST FOR THE BENEFIT OF THE SURVIVING SPOUSE BY REASON**
23 **OF A DECEDENT’S DEATH AND PROPERTY HELD FOR THE BENEFIT OF THE**
24 **SURVIVING SPOUSE IN ANY TRUST CREATED DURING A DECEDENT’S LIFETIME OF**
25 **WHICH THE DECEDENT WAS A SETTLOR, REDUCED BY:**

26 **(1) WITH RESPECT TO PROPERTY THAT THE DECEDENT OWNED**
27 **JOINTLY WITH THE SURVIVING SPOUSE, THAT PORTION OF THE VALUE OF THE**
28 **PROPERTY THAT IS NOT INCLUDED IN THE AUGMENTED ESTATE;**

29 **(2) THE VALUE OF ASSETS PASSING BY REASON OF THE DECEDENT’S**
30 **DEATH TO ANY TRUST OF WHICH THE SURVIVING SPOUSE IS NOT THE SOLE**
31 **BENEFICIARY DURING THE SURVIVING SPOUSE’S LIFETIME;**

32 **(3) THE VALUE OF ASSETS HELD IN ANY TRUST CREATED DURING THE**
33 **DECEDENT’S LIFETIME OF WHICH:**

1 **(I) THE DECEDENT WAS A SETTLOR; AND**

2 **(II) THE SURVIVING SPOUSE IS NOT THE SOLE BENEFICIARY**
3 **DURING THE SURVIVING SPOUSE'S LIFETIME;**

4 **(4) REGARDLESS OF WHETHER THE ELECTION REQUIRED UNDER**
5 **THE INTERNAL REVENUE CODE ACTUALLY HAS BEEN MADE, ONE-QUARTER OF THE**
6 **SUM OF:**

7 **(I) THE AGGREGATE VALUE OF ASSETS PASSING BY REASON OF**
8 **THE DECEDENT'S DEATH TO ANY TRUST FOR THE BENEFIT OF THE SURVIVING**
9 **SPOUSE THAT MEETS THE DEFINITION OF "QUALIFIED TERMINABLE INTEREST**
10 **PROPERTY" UNDER § 2056(B) OF THE INTERNAL REVENUE CODE; AND**

11 **(II) THE AGGREGATE VALUE OF ASSETS HELD AT THE TIME OF**
12 **THE DECEDENT'S DEATH IN ANY TRUST OF WHICH THE DECEDENT WAS THE SETTLOR**
13 **THAT MEETS THE DEFINITION OF "QUALIFIED TERMINABLE INTEREST PROPERTY"**
14 **UNDER § 2523(F) OF THE INTERNAL REVENUE CODE; AND**

15 **(5) ONE-THIRD OF THE SUM OF THE FOLLOWING, FROM WHICH THE**
16 **TRUSTEES MAY MAKE DISTRIBUTIONS TO OR FOR THE BENEFIT OF THE SURVIVING**
17 **SPOUSE IN ACCORDANCE WITH A STANDARD NOT MORE RESTRICTIVE THAN THAT**
18 **UNDER § 14-402(B)(3) OF THIS ARTICLE:**

19 **(I) THE AGGREGATE VALUE OF ASSETS PASSING BY REASON OF**
20 **THE DECEDENT'S DEATH TO ANY TRUST FOR THE EXCLUSIVE LIFETIME BENEFIT OF**
21 **THE SURVIVING SPOUSE; AND**

22 **(II) THE AGGREGATE VALUE OF ASSETS HELD AT THE TIME OF**
23 **THE DECEDENT'S DEATH IN ANY TRUST, OTHER THAN A TRUST DESCRIBED UNDER**
24 **PARAGRAPH (4) OF THIS SUBSECTION, FOR THE EXCLUSIVE LIFETIME BENEFIT OF**
25 **THE SURVIVING SPOUSE AND OF WHICH THE DECEDENT WAS A SETTLOR.**

26 **(I) "VALUE" MEANS:**

27 **(1) FOR AN ASSET INCLUDED IN THE GROSS ESTATE OF A DECEDENT,**
28 **THE VALUE OF THE ASSET UNDER SUBTITLE B OF THE INTERNAL REVENUE CODE,**
29 **IF A FEDERAL OR STATE ESTATE TAX RETURN IS REQUIRED TO BE FILED WITH**
30 **RESPECT TO THE DECEDENT; AND**

31 **(2) FOR ANY OTHER ASSET, THE VALUE OF THE ASSET UNDER § 7-202**
32 **OF THIS ARTICLE.**

1 **3-402.**

2 **THE PURPOSES OF THIS SUBTITLE ARE:**

3 **(1) TO ENSURE THAT A SURVIVING SPOUSE IS REASONABLY**
4 **PROVIDED FOR DURING THE SURVIVING SPOUSE'S REMAINING LIFETIME; AND**

5 **(2) SUBJECT TO ITEM (1) OF THIS SECTION, TO PROVIDE A DECEDENT**
6 **FLEXIBILITY IN ORDERING THE DECEDENT'S AFFAIRS.**

7 **3-403.**

8 **THE SURVIVING SPOUSE MAY ELECT TO TAKE AN ELECTIVE SHARE OF AN**
9 **AUGMENTED ESTATE AS FOLLOWS:**

10 **(1) IF THERE IS SURVIVING ISSUE, THE ELECTIVE SHARE SHALL**
11 **EQUAL ONE-THIRD OF THE VALUE OF THE AUGMENTED ESTATE, REDUCED BY THE**
12 **VALUE OF ALL SPOUSAL BENEFITS; OR**

13 **(2) IF THERE IS NO SURVIVING ISSUE, THE ELECTIVE SHARE SHALL**
14 **EQUAL ONE-HALF OF THE VALUE OF THE AUGMENTED ESTATE, REDUCED BY THE**
15 **VALUE OF ALL SPOUSAL BENEFITS.**

16 **3-404.**

17 **(A) THE RIGHT OF ELECTION OF A SURVIVING SPOUSE:**

18 **(1) IS PERSONAL TO THE SURVIVING SPOUSE;**

19 **(2) IS NOT TRANSFERABLE; AND**

20 **(3) CANNOT BE EXERCISED AFTER THE SURVIVING SPOUSE'S DEATH.**

21 **(B) IF THE SURVIVING SPOUSE IS A MINOR OR UNDER DISABILITY, THE**
22 **ELECTION MAY BE EXERCISED BY ORDER OF THE COURT HAVING JURISDICTION OF**
23 **THE PERSON OR PROPERTY OF THE MINOR OR PERSON UNDER DISABILITY.**

24 **3-405.**

25 **(A) THE RIGHT OF ELECTION OF A SURVIVING SPOUSE MAY BE WAIVED**
26 **BEFORE OR AFTER MARRIAGE BY A WRITTEN CONTRACT, AGREEMENT, OR WAIVER**
27 **SIGNED BY THE PARTY WAIVING THE RIGHT OF ELECTION.**

1 (B) UNLESS THE WAIVER PROVIDES TO THE CONTRARY, A WAIVER OF “ALL
2 RIGHTS”, OR EQUIVALENT LANGUAGE, IN THE PROPERTY OR ESTATE OF A PRESENT
3 OR PROSPECTIVE SPOUSE OR A COMPLETE PROPERTY SETTLEMENT ENTERED INTO
4 AFTER OR IN ANTICIPATION OF SEPARATION OR DIVORCE IS A WAIVER OF ALL
5 RIGHTS OF FAMILY ALLOWANCE AND ELECTIVE SHARE BY EACH SPOUSE IN THE
6 PROPERTY OF THE OTHER AND THE RIGHT TO LETTERS UNDER § 5-104 OF THIS
7 ARTICLE, AND IS AN IRREVOCABLE RENUNCIATION BY EACH SPOUSE OF ALL
8 BENEFITS THAT WOULD OTHERWISE PASS TO THE SPOUSE FROM THE OTHER BY
9 INTESTATE SUCCESSION, BY ELECTIVE SHARE, OR BY VIRTUE OF A WILL OR
10 REVOCABLE TRUST OF THE PRESENT OR PROSPECTIVE SPOUSE EXECUTED BEFORE
11 THE WAIVER OR PROPERTY SETTLEMENT.

12 **3-406.**

13 (A) (1) THE ELECTION BY A SURVIVING SPOUSE TO TAKE AN ELECTIVE
14 SHARE SHALL BE MADE WITHIN THE LATER OF:

15 (I) 9 MONTHS AFTER THE DATE OF THE DECEDENT’S DEATH; OR

16 (II) 6 MONTHS AFTER THE FIRST APPOINTMENT OF A PERSONAL
17 REPRESENTATIVE UNDER A WILL.

18 (2) (I) WITHIN THE PERIOD FOR MAKING AN ELECTION, THE
19 SURVIVING SPOUSE MAY FILE WITH THE COURT A PETITION FOR AN EXTENSION OF
20 TIME, WITH A COPY GIVEN TO THE PERSONAL REPRESENTATIVE.

21 (II) FOR GOOD CAUSE SHOWN, THE COURT MAY EXTEND THE
22 TIME FOR ELECTION FOR A PERIOD NOT TO EXCEED 3 MONTHS AT A TIME.

23 (B) THE SURVIVING SPOUSE MAY WITHDRAW THE ELECTION AT ANY TIME
24 BEFORE THE EXPIRATION OF THE TIME FOR MAKING THE ELECTION TO TAKE AN
25 ELECTIVE SHARE.

26 **3-407.**

27 (A) (1) AN ELECTION TO TAKE AN ELECTIVE SHARE UNDER THIS
28 SUBTITLE:

29 (I) SHALL BE IN WRITING AND SIGNED BY THE SURVIVING
30 SPOUSE OR OTHER PERSON ENTITLED TO MAKE THE ELECTION UNDER § 3-404 OF
31 THIS SUBTITLE; AND

1 (ii) 1. SHALL BE FILED IN THE COURT IN WHICH THE
2 PERSONAL REPRESENTATIVE OF THE DECEDENT WAS APPOINTED; OR

3 2. IF NO PERSONAL REPRESENTATIVE OF THE
4 DECEDENT HAS BEEN APPOINTED, SHALL BE FILED IN THE COURT FOR THE
5 JURISDICTION IN WHICH THE DECEDENT RESIDED AT THE TIME OF THE DECEDENT'S
6 DEATH.

7 (2) NOTICE OF THE FILING OF AN ELECTION TO TAKE AN ELECTIVE
8 SHARE UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY BE DELIVERED:

9 (i) TO THE TRUSTEE OF EACH REVOCABLE TRUST OF THE
10 DECEDENT; OR

11 (ii) TO THE PERSON RESPONSIBLE FOR FILING THE ESTATE TAX
12 RETURN, IF DIFFERENT FROM THE TRUSTEE.

13 (B) THE ELECTION MAY BE IN THE FOLLOWING FORM:

14 "I, A. B., SURVIVING SPOUSE OF C. D., LATE OF THE COUNTY (CITY) OF
15, ELECT TO TAKE MY ELECTIVE SHARE OF THE DECEDENT'S AUGMENTED
16 ESTATE UNDER § 3-403 OF THE ESTATES AND TRUSTS ARTICLE OF THE
17 ANNOTATED CODE OF MARYLAND.

18
19 (SIGNATURE)".

20 3-408.

21 (A) ON RECEIPT OF A WRITTEN REQUEST BY THE SURVIVING SPOUSE, ALL
22 INFORMATION NECESSARY TO CALCULATE THE ELECTIVE SHARE UNDER THIS
23 SUBTITLE SHALL BE DELIVERED TO THE SURVIVING SPOUSE BY, AS APPLICABLE:

24 (1) THE PERSONAL REPRESENTATIVE OF THE DECEDENT;

25 (2) THE TRUSTEE OF ANY REVOCABLE TRUST OF THE DECEDENT; OR

26 (3) THE PERSON RESPONSIBLE FOR FILING THE ESTATE TAX
27 RETURN.

28 (B) (1) THE FILING OF AN ELECTION TO TAKE THE ELECTIVE SHARE
29 UNDER § 3-407 OF THIS SUBTITLE IS DEEMED TO GIVE ADEQUATE NOTICE OF THE
30 ELECTION TO, AS APPLICABLE:

- 1 **(I) THE PERSONAL REPRESENTATIVE OF THE DECEDENT;**
2 **(II) THE TRUSTEE OF ANY REVOCABLE TRUST OF THE**
3 **DECEDENT; OR**
4 **(III) THE PERSON RESPONSIBLE FOR FILING THE ESTATE TAX**
5 **RETURN.**

6 **(2) THE PERSON RECEIVING NOTICE OF AN ELECTION TO TAKE THE**
7 **ELECTIVE SHARE UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL PROMPTLY**
8 **DELIVER NOTICE OF THE ELECTION TO EACH PERSON FROM WHOM ANY PORTION OF**
9 **THE ELECTIVE SHARE MAY BE PAYABLE.**

10 **(C) WITHIN 60 DAYS AFTER THE DATE A TRUSTEE OF A REVOCABLE TRUST**
11 **OF THE DECEDENT ACQUIRES KNOWLEDGE OF THE DECEDENT'S DEATH, THE**
12 **TRUSTEE SHALL NOTIFY THE SURVIVING SPOUSE OF THE EXISTENCE OF THE TRUST,**
13 **OF THE IDENTITY OF THE TRUSTEES, AND OF THE SURVIVING SPOUSE'S RIGHT TO**
14 **REQUEST A COPY OF THE TRUST INSTRUMENT.**

15 **3-409.**

16 **(A) THIS SUBSECTION DOES NOT APPLY IF PAYMENT OF THE ELECTIVE**
17 **SHARE OF A SURVIVING SPOUSE IS OTHERWISE PROVIDED FOR:**

- 18 **(1) (I) IN THE DECEDENT'S WILL; OR**
19 **(II) IN THE INSTRUMENT GOVERNING ANY TRUST OF WHICH THE**
20 **DECEDENT WAS THE SETTLOR; OR**

21 **(2) IN A WRITTEN AGREEMENT BETWEEN THE PERSONS**
22 **RESPONSIBLE FOR PAYING THE ELECTIVE SHARE THAT IS APPROVED BY THE**
23 **COURT.**

24 **(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE**
25 **ELECTIVE SHARE OF A SURVIVING SPOUSE SHALL BE PAID:**

26 **(I) FROM THE PORTION OF THE DECEDENT'S PROBATE ESTATE**
27 **THAT IS INCLUDED IN THE AUGMENTED ESTATE AND DOES NOT CONSTITUTE ANY**
28 **PART OF THE SPOUSAL BENEFITS;**

29 **(II) TO THE EXTENT THE ELECTIVE SHARE IS NOT FULLY PAID**
30 **AS PROVIDED IN ITEM (I) OF THIS PARAGRAPH:**

1 **1. FROM THE PORTION OF ANY REVOCABLE TRUST OF**
2 **THE DECEDENT THAT IS INCLUDED IN THE AUGMENTED ESTATE AND DOES NOT**
3 **CONSTITUTE ANY PART OF THE SPOUSAL BENEFITS; AND**

4 **2. IF THERE IS MORE THAN ONE REVOCABLE TRUST OF**
5 **THE DECEDENT, THE PAYMENT SHALL BE APPORTIONED AMONG THE TRUSTS IN**
6 **PROPORTION TO THE VALUE OF THE ASSETS OF EACH REVOCABLE TRUST THAT ARE**
7 **AVAILABLE TO SATISFY THE ELECTIVE SHARE; AND**

8 **(III) TO THE EXTENT THE ELECTIVE SHARE IS NOT FULLY PAID**
9 **AS PROVIDED IN ITEMS (I) AND (II) OF THIS PARAGRAPH, BY THE RECIPIENTS OF ANY**
10 **OTHER PORTIONS OF THE AUGMENTED ESTATE THAT DO NOT CONSTITUTE ANY**
11 **PART OF THE SPOUSAL BENEFITS, PRORATED AMONG THE RECIPIENTS IN**
12 **PROPORTION TO THE VALUE OF THE ASSETS RECEIVED BY EACH RECIPIENT.**

13 **(2) IF ANY PAYMENT REQUIRED BY THIS SUBSECTION IS PREEMPTED**
14 **BY FEDERAL LAW, THE PORTION OF THE ELECTIVE SHARE PAYABLE UNDER THIS**
15 **SUBSECTION SHALL BE APPORTIONED AMONG THOSE RECIPIENTS WHOSE BENEFITS**
16 **ARE NOT PREEMPTED UNDER FEDERAL LAW.**

17 **(C) UNLESS THE SURVIVING SPOUSE AND THE PAYOR AGREE OTHERWISE IN**
18 **WRITING, EACH PERSON REQUIRED TO PAY A PORTION OF THE ELECTIVE SHARE**
19 **UNDER THIS SECTION SHALL MAKE PAYMENT:**

20 **(1) IN A MANNER THAT IS DEEMED TO BE IN ACCORDANCE WITH THE**
21 **TERMS AND PURPOSES OF ANY INSTRUMENT GOVERNING THE DISPOSITION OF THE**
22 **PORTION OF THE AUGMENTED ESTATE FROM WHICH THE PORTION OF THE**
23 **ELECTIVE SHARE IS TO BE PAID; AND**

24 **(2) (I) IN CASH;**

25 **(II) WITH A PRORATED SHARE OF EACH ITEM OF PROPERTY**
26 **FROM WHICH THAT PORTION OF THE ELECTIVE SHARE CAN BE PAID; OR**

27 **(III) WITH OTHER PROPERTY ACCEPTABLE TO THE SURVIVING**
28 **SPOUSE, IN AN AMOUNT EQUAL TO THE FAIR MARKET VALUE OF THAT PORTION OF**
29 **THE ELECTIVE SHARE TO BE PAID BY THE PAYOR.**

30 **(D) A PAYOR OR ANY OTHER THIRD PARTY, OTHER THAN THE PERSONAL**
31 **REPRESENTATIVE OF THE DECEDENT, THE TRUSTEE OF ANY REVOCABLE TRUST OF**
32 **THE DECEDENT, OR THE PERSON RESPONSIBLE FOR THE FILING OF THE ESTATE TAX**
33 **RETURN, IS NOT LIABLE FOR HAVING MADE A PAYMENT OR TRANSFERRED AN ITEM**
34 **OF PROPERTY, OR ANY OTHER BENEFIT FROM WHICH THE ELECTIVE SHARE MIGHT**

1 BE PAID, TO A BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT IF THE
2 PAYMENT OR TRANSFER IS MADE:

3 (1) IN GOOD FAITH RELIANCE ON THE VALIDITY OF THE GOVERNING
4 INSTRUMENT OR BENEFICIARY DESIGNATION ON REQUEST AND SATISFACTORY
5 PROOF OF THE DEATH OF THE DECEDENT; AND

6 (2) BEFORE THE PAYOR OR OTHER THIRD PARTY RECEIVES WRITTEN
7 NOTICE OF THE ELECTION BY THE SURVIVING SPOUSE TO RECEIVE THE ELECTIVE
8 SHARE UNDER THIS SUBTITLE.

9 3-410.

10 (A) ON THE ELECTION OF THE SURVIVING SPOUSE TO TAKE AN ELECTIVE
11 SHARE UNDER THIS SUBTITLE, ALL PROPERTY OR OTHER BENEFITS THAT WOULD
12 HAVE PASSED TO THE SURVIVING SPOUSE UNDER THE WILL, OTHER THAN ANY
13 PORTION OF THE SPOUSAL BENEFITS, SHALL BE TREATED AS IF THE SURVIVING
14 SPOUSE HAD DIED BEFORE THE EXECUTION OF THE WILL.

15 (B) THE SURVIVING SPOUSE AND A PERSON CLAIMING THROUGH THE
16 SURVIVING SPOUSE MAY NOT RECEIVE PROPERTY UNDER THE WILL, OTHER THAN
17 PROPERTY FORMING ANY PORTION OF THE SPOUSAL BENEFITS.

18 3-411.

19 (A) IN THIS SECTION, "ELIGIBLE PETITIONER" MEANS:

20 (1) THE SURVIVING SPOUSE;

21 (2) THE PERSONAL REPRESENTATIVE OF THE DECEDENT;

22 (3) THE TRUSTEE OF ANY REVOCABLE TRUST OF THE DECEDENT;

23 (4) THE PERSON RESPONSIBLE FOR FILING THE ESTATE TAX
24 RETURN;

25 (5) ANY INTERESTED PERSON IN THE ESTATE OF THE DECEDENT;

26 (6) ANY QUALIFIED BENEFICIARY, AS DEFINED IN § 14.5-103 OF THIS
27 ARTICLE, OF ANY REVOCABLE TRUST OF THE DECEDENT; OR

28 (7) ANY OTHER PERSON WHO MAY BE REQUIRED TO PAY ANY
29 PORTION OF THE ELECTIVE SHARE UNDER § 3-408 OF THIS SUBTITLE.

1 **(B) AN ELIGIBLE PETITIONER MAY PETITION THE COURT TO MODIFY:**

2 **(1) THE CALCULATION OF THE VALUE OF AN AUGMENTED ESTATE;**

3 **(2) THE CALCULATION OF THE VALUE OF SPOUSAL BENEFITS; OR**

4 **(3) THE SOURCES OF PAYMENT OF AN ELECTIVE SHARE.**

5 **(C) IF, ON A PETITION FILED UNDER SUBSECTION (B) OF THIS SECTION, THE**
6 **COURT FINDS THAT THE CALCULATION OR PAYMENT OF AN ELECTIVE SHARE UNDER**
7 **THIS SUBTITLE WOULD FRUSTRATE THE PURPOSES OF THIS SUBTITLE, THE COURT**
8 **MAY MODIFY:**

9 **(1) THE VALUE OF THE AUGMENTED ESTATE;**

10 **(2) THE VALUE OF THE SPOUSAL BENEFITS; OR**

11 **(3) THE SOURCES OF PAYMENT OF THE ELECTIVE SHARE.**

12 **(D) IN THE COURT'S CONSIDERATION OF ANY PETITION UNDER THIS**
13 **SECTION, THERE IS A REBUTTABLE PRESUMPTION THAT TRANSFERS OR**
14 **ARRANGEMENTS THAT BECAME IRREVOCABLE BEFORE THE DECEDENT'S MARRIAGE**
15 **TO THE SURVIVING SPOUSE ARE EXCLUDED FROM THE AUGMENTED ESTATE.**

16 **(E) IN DETERMINING WHETHER AN ASSET SHOULD BE INCLUDED IN THE**
17 **VALUE OF THE AUGMENTED ESTATE OR THE SPOUSAL BENEFITS, THE COURT MAY**
18 **CONSIDER THE CIRCUMSTANCES OF THE TRANSFER OR ARRANGEMENT, INCLUDING:**

19 **(1) THE EXTENT OF CONTROL RETAINED BY THE DECEDENT;**

20 **(2) THE MOTIVATION FOR THE TRANSFER OR ARRANGEMENT;**

21 **(3) THE FAMILIAL RELATIONSHIP BETWEEN THE DECEDENT AND THE**
22 **BENEFICIARY OF THE TRANSFER OR ARRANGEMENT;**

23 **(4) THE DEGREE TO WHICH THE TRANSFER OR ARRANGEMENT**
24 **DEPRIVES THE SURVIVING SPOUSE OF PROPERTY THAT OTHERWISE MIGHT FORM**
25 **PART OF THE VALUE OF THE AUGMENTED ESTATE OR SPOUSAL BENEFITS;**

26 **(5) THE DEGREE TO WHICH THE TRANSFER OR ARRANGEMENT**
27 **PROVIDES A BENEFIT TO THE SURVIVING SPOUSE BEYOND WHAT WOULD BE**
28 **AVAILABLE TO THE SURVIVING SPOUSE AS PART OF THE ELECTIVE SHARE; AND**

1 **(6) THE SURVIVING SPOUSE’S ASSETS.**

2 6–306.

3 (a) A personal representative shall be removed from office upon a finding by the
4 court that [he] **THE PERSONAL REPRESENTATIVE:**

5 (1) Misrepresented material facts in the proceedings leading to [his] **THE**
6 **PERSONAL REPRESENTATIVE’S** appointment;

7 (2) Willfully disregarded an order of the court;

8 (3) Is unable or incapable, with or without [his own] fault, to discharge
9 [his] **THE** duties and powers **OF THE PERSONAL REPRESENTATIVE** effectively;

10 (4) Has mismanaged property;

11 (5) Has failed to maintain on file with the register a currently effective
12 designation of an appropriate local agent for service of process as described in § 5–105(c)(6)
13 of this article; [or]

14 (6) Has failed, without reasonable excuse, to perform a material duty
15 pertaining to the office; **OR**

16 **(7) IS THE SURVIVING SPOUSE OF THE DECEDENT WHO HAS ELECTED**
17 **TO TAKE AN ELECTIVE SHARE UNDER § 3–403 OF THIS ARTICLE.**

18 7–603.

19 **(A) [When a] A** personal representative or person nominated as personal
20 representative **WHO** defends or prosecutes a proceeding in good faith and with just cause[,
21 he] shall be entitled to receive [his] necessary expenses and disbursements from the estate
22 regardless of the outcome of the proceeding.

23 **(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN ADDITION**
24 **TO THE COMPENSATION PROVIDED FOR IN THIS SUBTITLE, A PERSONAL**
25 **REPRESENTATIVE IS ENTITLED TO REASONABLE COMMISSIONS OR ATTORNEY’S**
26 **FEEES, AS DETERMINED BY THE COURT, IN CONNECTION WITH ANY ACTION BROUGHT**
27 **UNDER § 3–411 OF THIS ARTICLE.**

28 **(2) THE AMOUNT OF COMPENSATION OR ATTORNEY’S FEES**
29 **CONSENTED TO BY ALL INTERESTED PERSONS IS PRESUMED TO BE REASONABLE.**

30 **14.5–604.**

1 **(A) IN THIS SECTION, “SPOUSAL BENEFITS” HAS THE MEANING STATED IN §**
2 **3–401 OF THIS ARTICLE.**

3 **(B) UNLESS THE TERMS OF A TRUST INSTRUMENT, COURT ORDER, OR**
4 **WRITTEN AGREEMENT BETWEEN THE SETTLOR AND THE SETTLOR’S SURVIVING**
5 **SPOUSE EXPRESSLY PROVIDE OTHERWISE, ON THE FILING OF AN ELECTION BY A**
6 **SURVIVING SPOUSE TO TAKE AN ELECTIVE SHARE UNDER § 3–403 OF THIS ARTICLE**
7 **THAT INVOLVES A FORMERLY REVOCABLE TRUST OF A SETTLOR, A SURVIVING**
8 **SPOUSE SERVING AS THE TRUSTEE OF THE TRUST OR AN ADVISOR TO THE TRUSTEE**
9 **SHALL BE REMOVED AS A TRUSTEE OR AN ADVISOR ON THE DATE OF THE FILING OF**
10 **THE ELECTION WITHOUT FURTHER COURT ACTION.**

11 **(C) AFTER THE FILING OF AN ELECTION TO TAKE AN ELECTIVE SHARE**
12 **UNDER SUBSECTION (B) OF THIS SECTION BECOMES FINAL:**

13 **(1) THE SURVIVING SPOUSE MAY NOT:**

14 **(I) SERVE AS A TRUSTEE OR AN ADVISOR TO THE TRUSTEE OF**
15 **THE TRUST; OR**

16 **(II) EXERCISE ANY TRUST OR FIDUCIARY POWERS PROVIDED**
17 **FOR IN THE TERMS OF THE TRUST;**

18 **(2) ALL PROPERTY OR OTHER BENEFITS THAT WOULD HAVE PASSED**
19 **TO THE SURVIVING SPOUSE UNDER THE TRUST INSTRUMENT, OTHER THAN ANY**
20 **PORTION OF THE SPOUSAL BENEFITS, SHALL BE TREATED AS IF THE SURVIVING**
21 **SPOUSE HAD DIED ON THE DAY BEFORE THE SETTLOR; AND**

22 **(3) THE SURVIVING SPOUSE OR A PERSON CLAIMING THROUGH THE**
23 **SURVIVING SPOUSE MAY NOT RECEIVE PROPERTY, OTHER THAN PROPERTY**
24 **FORMING ANY PORTION OF THE SPOUSAL BENEFITS, UNDER THE TRUST**
25 **INSTRUMENT.**

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
27 apply only prospectively and may not be applied or interpreted to have any effect on or
28 application to any estate opened before the effective date of this Act or any revocable trust
29 of a decedent that became irrevocable by reason of the death or incapacity of the settlor
30 before the effective date of this Act.

31 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2016.