

# HOUSE BILL 1349

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By: **Delegate Arentz**

Introduced and read first time: February 9, 2024

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Elective Share of Surviving Spouse – Exclusion of**  
3 **Inherited Property**

4 FOR the purpose of excluding from a decedent’s augmented estate the value of certain  
5 property inherited by the decedent when calculating the estate from which a  
6 surviving spouse may elect to take a certain share; and generally relating to the  
7 elective share of an estate for the surviving spouse of a decedent.

8 BY repealing and reenacting, with amendments,

9 Article – Estates and Trusts

10 Section 3–404

11 Annotated Code of Maryland

12 (2022 Replacement Volume and 2023 Supplement)

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

15 **Article – Estates and Trusts**

16 3–404.

17 (a) (1) Subject to paragraph (2) of this subsection, the value of the decedent’s  
18 augmented estate shall be calculated by totaling the value of:

19 (i) The probate estate of the decedent;

20 (ii) All revocable trusts of the decedent;

21 (iii) All property with respect to which the decedent, immediately  
22 before death, held a qualifying power of disposition;

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (iv) All qualifying joint interests of the decedent; and

2 (v) All qualifying lifetime transfers of the decedent.

3 (2) If a property interest is included in the augmented estate under more  
4 than one item of paragraph (1) of this subsection, only the item resulting in the largest  
5 augmented estate shall apply.

6 (b) The estate subject to election shall be calculated by reducing the value of the  
7 decedent's augmented estate by:

8 (1) Funeral and administration expenses payable from the augmented  
9 estate;

10 (2) Family allowances payable from the augmented estate;

11 (3) Enforceable claims and debts against any part of the augmented estate;

12 (4) The value of any assets included in the augmented estate that, at the  
13 time of the decedent's death, were held in a trust of which the decedent is not a settlor, if:

14 (i) The assets were not previously owned by the decedent; or

15 (ii) The assets were previously owned by the decedent but were sold  
16 by the decedent in accordance with a bona fide sale for adequate consideration in money or  
17 money's worth;

18 (5) The value of any assets included in the augmented estate under  
19 subsection (a)(1)(iii) of this section that, at the time of the decedent's death, were held:

20 (i) In a trust established under § 1917(c)(2)(B)(iii), (c)(2)(B)(iv),  
21 (d)(4)(A), or (d)(4)(C) of the Social Security Act;

22 (ii) In an account established under § 529A of the Internal Revenue  
23 Code; or

24 (iii) In a special needs trust for the benefit of an individual who is  
25 disabled as defined in § 1614(a)(3) of the Social Security Act;

26 (6) The value of any property included in the augmented estate under  
27 subsection (a)(1)(iii), (iv), or (v) of this section, the disposition of which the surviving spouse  
28 of the decedent consented to in writing during the decedent's lifetime other than by means  
29 of spousal consent to split-gift treatment under the federal gift tax laws;

30 (7) The value of any qualifying lifetime transfer of the decedent described  
31 in § 3-401(i)(1)(ii) of this subtitle where:

1 (i) The initial transfer took place before the decedent's marriage to  
2 the surviving spouse of the decedent; or

3 (ii) The decedent's interest in the property transferred terminated  
4 more than 2 years before the decedent's death;

5 (8) The value of any qualifying lifetime transfer of the decedent described  
6 in § 3-401(i)(1)(iii) of this subtitle that occurred before the later of:

7 (i) The decedent's marriage to the surviving spouse of the decedent;  
8 or

9 (ii) 2 years before the decedent's death;

10 (9) The value of any interest in real property included in the augmented  
11 estate by reason of the decedent's retention of a life estate in the real property if:

12 (i) At the time of the decedent's death, the decedent held no  
13 qualifying power of disposition over the real property; and

14 (ii) The decedent's life estate in the property was created more than  
15 2 years before the decedent's death; [and]

16 (10) The value of the proceeds of an insurance policy on the decedent's life  
17 in excess of the net cash surrender value of the policy immediately before the decedent's  
18 death or, in the case of term insurance, in excess of the total premiums paid, if:

19 (i) The proceeds are included in the augmented estate;

20 (ii) The proceeds are payable to a charity or to or for the exclusive  
21 lifetime benefit of an ancestor, a descendant, a step-descendant, or a sibling of the  
22 decedent; and

23 (iii) 1. The policy was purchased before the decedent's marriage  
24 to the surviving spouse of the decedent;

25 2. The policy was purchased more than 5 years before the  
26 decedent's death; or

27 3. The surviving spouse of the decedent consented in writing  
28 during the decedent's lifetime to the disposition of the proceeds as described in item (ii) of  
29 this item; AND

30 **(11) THE VALUE OF ANY PROPERTY INHERITED BY THE DECEDENT.**

31 (c) (1) The value of a qualifying lifetime transfer described under §  
32 3-401(i)(1)(i) of this subtitle shall be determined as if the property still was owned by the

1 transferor.

2           (2) The value of a qualifying lifetime transfer described under §  
3 3–401(i)(1)(ii) of this subtitle shall be determined as of the date of the termination of the  
4 transferor’s interest in the transferred property.

5           (3) The value of a qualifying lifetime transfer described under §  
6 3–401(i)(1)(iii) of this subtitle shall be determined as of the date of the transfer.

7           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to  
8 apply only prospectively and may not be applied or interpreted to have any effect on or  
9 application to any estate of a decedent who died before the effective date of this Act.

10           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
11 October 1, 2024.