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**By: Delegates Finifter and Klausmeier**

Introduced and read first time: January 30, 1997

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts - Elective Share for Surviving Spouse**

3 FOR the purpose of authorizing a surviving spouse to take an elective share of the  
4 decedent's elective estate rather than the decedent's net estate, in lieu of property  
5 left to the spouse by will; specifying the value of an elective estate, including the  
6 value of the decedent's probate estate and property outside the probate estate;  
7 specifying certain elements not included in an elective estate; specifying the value of  
8 certain properties included in an elective estate; specifying a method for valuing the  
9 spouse's interest in property that passes in trust for the spouse; specifying that the  
10 amount of an elective share is the greater of a certain minimum amount and an  
11 amount that is dependent on the length of the marriage between the decedent and  
12 the surviving spouse; requiring that the elective share amount be satisfied from  
13 certain recipients of property included in the elective estate in a certain order of  
14 priority; requiring that any unsatisfied balance of the elective is to be apportioned  
15 among certain direct recipients of property in the elective estate in a certain order  
16 of priority; requiring that any amount to be satisfied from trust property is to be  
17 paid from the assets of the trust in a certain order; specifying that direct recipients  
18 and certain beneficiaries are liable to contribute toward satisfaction of the elective  
19 share; allowing certain beneficiaries and direct recipients to contribute certain  
20 property or pay certain amounts instead of paying the amount for which they are  
21 liable; specifying that the elective share is in addition to the family allowance  
22 provided under State law; requiring that, if an election to take an elective share is  
23 filed, the balance of the elective estate after the elective share is satisfied is to be  
24 administered as though the surviving spouse had predeceased the decedent;  
25 requiring that each contribution to the elective share bear interest at a certain rate;  
26 requiring the personal representative to enforce contribution; allowing the personal  
27 representative to be relieved of the duty to enforce contribution under certain  
28 circumstances; relieving all banks and other third parties from liability for paying,  
29 distributing, or transferring property to certain beneficiaries or for taking certain  
30 other actions; specifying that this Act does not affect the surviving spouse's right to  
31 bring an action to enforce an order of contribution; allowing the spouse who does  
32 bring an action to collect costs and reasonable attorney's fees; providing that this  
33 Act applies to decedents who die on or after a certain date; specifying that certain  
34 provisions of law apply to decedents who die before a certain date; requiring that a  
35 trust created by the decedent before a certain date that meets the requirements of  
36 an elective share trust is to be treated in a certain way; defining certain terms;

2

1 making certain technical changes; and generally relating to elective shares for  
2 spouses.

3 BY renumbering

4 Article - Estates and Trusts  
5 Section 3-204 through 3-207, respectively  
6 to be Section 3-220 through 3-223, respectively  
7 Annotated Code of Maryland  
8 (1991 Replacement Volume and 1996 Supplement)

9 BY repealing

10 Article - Estates and Trusts  
11 Section 3-203 and 3-208  
12 Annotated Code of Maryland  
13 (1991 Replacement Volume and 1996 Supplement)

14 BY repealing and reenacting, with amendments,

15 Article - Estates and Trusts  
16 Section 3-221  
17 Annotated Code of Maryland  
18 (1991 Replacement Volume and 1996 Supplement)  
19 (As enacted by Section 1 of this Act)

20 BY adding to

21 Article - Estates and Trusts  
22 Section 3-203 through 3-219  
23 Annotated Code of Maryland  
24 (1991 Replacement Volume and 1996 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
26 MARYLAND, That Section(s) 3-204 through 3-207, respectively, of Article - Estates  
27 and Trusts of the Annotated Code of Maryland be renumbered to be Section(s) 3-220  
28 through 3-223, respectively.

29 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
30 read as follows:

31 **Article - Estates and Trusts**

32 [3-203.

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

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

3

1 (c) For the purposes of this section, the net estate shall be calculated without a  
2 deduction for the tax as defined in § 7-308 of the Tax - General Article.]

3 3-203.

4 INSTEAD OF TAKING PROPERTY LEFT TO THE SURVIVING SPOUSE BY WILL, A  
5 SURVIVING SPOUSE MAY TAKE AN ELECTIVE SHARE OF THE DECEDENT'S ELECTIVE  
6 ESTATE IN ACCORDANCE WITH THIS SUBTITLE.

7 3-204.

8 (A) SUBJECT TO § 3-207 OF THIS SUBTITLE, THE DECEDENT'S ELECTIVE  
9 ESTATE IS THE VALUE OF:

10 (1) THE DECEDENT'S PROBATE ESTATE, WHICH CONSISTS OF ALL  
11 PROPERTY SUBJECT TO ESTATE ADMINISTRATION IN ANY STATE;

12 (2) ACCOUNTS OR SECURITIES THAT THE DECEDENT, IMMEDIATELY  
13 BEFORE DEATH, HAD THE RIGHT TO WITHDRAW OR USE WITHOUT ACCOUNTING TO  
14 ANY PERSON;

15 (3) INTEREST IN PROPERTY, OTHER THAN PROPERTY DESCRIBED IN  
16 ITEM (2) OF THIS SUBSECTION, THAT WAS HELD BY THE DECEDENT IN JOINT  
17 TENANCY WITH RIGHT OF SURVIVORSHIP OR IN TENANCY BY THE ENTIRETY AND  
18 THAT MAY BE COMPUTED BY DIVIDING THE VALUE OF THE PROPERTY BY THE  
19 NUMBER OF TENANTS;

20 (4) PROPERTY:

21 (I) OTHER THAN THAT DESCRIBED IN ITEM (2) OR (6) OF THIS  
22 SUBSECTION, THAT THE DECEDENT TRANSFERRED; AND

23 (II) FOR WHICH, AT THE TIME OF DEATH, THE TRANSFER WAS  
24 REVOCABLE BY:

25 1. THE DECEDENT ALONE; OR

26 2. THE DECEDENT IN CONJUNCTION WITH ANOTHER  
27 PERSON BUT NOT WITH THE CONSENT OF ALL PERSONS HAVING A BENEFICIAL  
28 INTEREST IN THE PROPERTY;

29 (5) THE BENEFICIAL INTEREST IN THE NET CASH SURRENDER VALUE  
30 IMMEDIATELY BEFORE DEATH OF ANY LIFE INSURANCE POLICY OF THE DECEDENT;

31 (6) AMOUNTS PAYABLE TO OR FOR THE BENEFIT OF A PERSON BY  
32 REASON OF SURVIVING THE DECEDENT UNDER A PENSION, RETIREMENT,  
33 DEFERRED COMPENSATION PLAN, OR SIMILAR ARRANGEMENT, OTHER THAN  
34 BENEFITS PAYABLE UNDER THE FEDERAL RAILROAD RETIREMENT ACT OR THE  
35 FEDERAL SOCIAL SECURITY SYSTEM;

36 (7) IN THE CASE OF A DEFINED CONTRIBUTION PLAN UNDER § 414(I) OF  
37 THE INTERNAL REVENUE CODE, ANY EXCESS OF THE PROCEEDS OF AN INSURANCE  
38 POLICY ON THE DECEDENT'S LIFE OVER THE NET CASH SURRENDER VALUE OF THE  
39 POLICY IMMEDIATELY BEFORE THE DECEDENT'S DEATH;

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1 (8) PROPERTY TRANSFERRED IN SATISFACTION OF THE ELECTIVE  
2 SHARE;

3 (9) SUBJECT TO § 3-205 OF THIS SUBTITLE, THE PART OF PROPERTY  
4 OTHER THAN PROPERTY DESCRIBED IN ITEM (2), (4), OR (6) OF THIS SUBSECTION  
5 THAT WAS TRANSFERRED BY THE DECEDENT, TO THE EXTENT THAT AT THE TIME  
6 OF DEATH:

7 (I) THE DECEDENT HAD THE RIGHT TO, OR IN FACT POSSESSED  
8 OR MADE USE OF, THE INCOME OR PRINCIPAL OF THE PROPERTY; OR

9 (II) THE PRINCIPAL OF THE PROPERTY COULD BE DISTRIBUTED  
10 OR APPOINTED TO OR FOR THE DECEDENT'S BENEFIT IN THE DISCRETION OF ANY  
11 PERSON OTHER THAN THE DECEDENT'S SPOUSE; OR

12 (10) PROPERTY THAT PASSED DURING THE 1-YEAR PERIOD BEFORE THE  
13 DECEDENT'S DEATH AS A RESULT OF A TRANSFER BY THE DECEDENT IF THE  
14 TRANSFER:

15 (I) RESULTED FROM THE TERMINATION OF A RIGHT OR  
16 INTEREST IN, OR POWER OVER, PROPERTY THAT WOULD HAVE BEEN INCLUDED IN  
17 THE ELECTIVE ESTATE UNDER ITEM (4) OR (9) OF THIS SUBSECTION IF THE RIGHT,  
18 INTEREST, OR POWER HAD NOT TERMINATED; OR

19 (II) CONCERNED PROPERTY NOT OTHERWISE INCLUDED IN THE  
20 ELECTIVE ESTATE AND MADE TO OR FOR THE BENEFIT OF ANY PERSON, EXCEPT:

21 1. PROPERTY TRANSFERRED FOR MEDICAL OR  
22 EDUCATIONAL EXPENSES THAT QUALIFIES FOR EXCLUSION FROM THE FEDERAL  
23 GIFT TAX; AND

24 2. AFTER THE APPLICATION OF A TRANSFER FOR MEDICAL  
25 OR EDUCATIONAL EXPENSES, THE FIRST \$10,000 OF PROPERTY TRANSFERRED TO OR  
26 FOR THE BENEFIT OF EACH DONEE DURING THE 1-YEAR PERIOD, BUT ONLY TO THE  
27 EXTENT THE TRANSFER QUALIFIES FOR EXCLUSION FROM THE FEDERAL GIFT TAX.

28 (B) IF ITEM (1) AND ANY OTHER ITEM OF SUBSECTION (A) OF THIS SECTION  
29 APPLY TO THE SAME PROPERTY INTEREST, THE AMOUNT INCLUDED IN THE  
30 ELECTIVE ESTATE UNDER THE OTHER ITEM IS REDUCED BY THE AMOUNT  
31 INCLUDED UNDER ITEM (1).

32 (C) IN ALL OTHER CASES, IF A PROPERTY INTEREST IS APPLICABLE TO MORE  
33 THAN ONE ITEM OF SUBSECTION (A) OF THIS SECTION, ONLY THE ITEM RESULTING  
34 IN THE LARGEST ELECTIVE ESTATE MAY BE APPLIED.

35 3-205.

36 (A) UNDER § 3-204(A)(9) OF THIS SUBTITLE, A RIGHT TO PAYMENT FROM AN  
37 ANNUITY OR SIMILAR CONTRACTUAL ARRANGEMENT IS TO BE TREATED AS A  
38 RIGHT TO THAT PART OF THE INCOME OF THE PROPERTY NEEDED TO EQUAL THE  
39 PAYMENT.

5

1 (B) THE AMOUNT OF THE PART OF PROPERTY INCLUDED IN § 3-204(A)(9) OF  
2 THIS SUBTITLE IS:

3 (1) WITH RESPECT TO § 3-204(A)(9)(I) OF THIS SUBTITLE, THE VALUE OF  
4 THE PART OF THE PROPERTY TO WHICH THE DECEDENT'S RIGHT OR ENJOYMENT  
5 RELATED, TO THE EXTENT THE PART PASSED TO OR FOR THE BENEFIT OF ANY  
6 PERSON OTHER THAN THE DECEDENT'S PROBATE ESTATE; AND

7 (2) WITH RESPECT TO § 3-204(A)(9)(II) OF THIS SUBTITLE, THE VALUE OF  
8 THE PART SUBJECT TO THE DISCRETION OF ANY PERSON OTHER THAN THE  
9 DECEDENT'S SPOUSE, TO THE EXTENT THE PART PASSED TO OR FOR THE BENEFIT  
10 OF ANY PERSON OTHER THAN THE DECEDENT'S PROBATE ESTATE.

11 (C) THE PROVISIONS OF § 3-204(A)(9) DO NOT APPLY TO PROPERTY IN WHICH  
12 THE DECEDENT'S ONLY INTERESTS ARE THAT:

13 (1) PROPERTY MAY BE DISTRIBUTED TO OR FOR THE BENEFIT OF THE  
14 DECEDENT ONLY WITH THE CONSENT OF ALL PERSONS THAT HAVE A BENEFICIAL  
15 INTEREST IN THE PROPERTY;

16 (2) INCOME OR PRINCIPAL OF PROPERTY MAY BE DISTRIBUTED TO OR  
17 FOR THE DECEDENT'S BENEFIT ONLY THROUGH THE EXERCISE OR IN DEFAULT OF  
18 AN EXERCISE OF A GENERAL POWER OF APPOINTMENT HELD BY A PERSON OTHER  
19 THAN THE DECEDENT;

20 (3) INCOME OR PRINCIPAL OF PROPERTY MAY BE DISTRIBUTED IN  
21 SATISFACTION OF THE DECEDENT'S OBLIGATION OF SUPPORT; OR

22 (4) THE DECEDENT HAD A CONTINGENT RIGHT TO RECEIVE PRINCIPAL,  
23 IF:

24 (I) THE CONTINGENT RIGHT WAS NOT AT THE DISCRETION OF  
25 ANOTHER PERSON; AND

26 (II) THE CONTINGENCY WAS OUTSIDE THE CONTROL OF THE  
27 DECEDENT AND HAD NOT OCCURRED AT THE DECEDENT'S DEATH.

28 3-206.

29 AN ELECTIVE ESTATE DOES NOT INCLUDE:

30 (1) A TRANSFER OF PROPERTY BY THE DECEDENT TO THE EXTENT THE  
31 TRANSFER IS IRREVOCABLE BEFORE THE EFFECTIVE DATE OF THIS ACT, OR AFTER  
32 THAT DATE BUT BEFORE THE DATE OF THE DECEDENT'S MARRIAGE TO THE  
33 SURVIVING SPOUSE;

34 (2) A TRANSFER OF PROPERTY BY THE DECEDENT TO THE EXTENT  
35 THAT THE DECEDENT RECEIVED ADEQUATE CONSIDERATION IN MONEY OR  
36 MONEY'S WORTH FOR THE TRANSFER;

37 (3) A TRANSFER OF PROPERTY BY THE DECEDENT MADE WITH THE  
38 WRITTEN CONSENT OF THE DECEDENT'S SPOUSE;

6

1 (4) THE PROCEEDS OF THE DECEDENT'S LIFE INSURANCE POLICY THAT  
2 EXCEEDS THE NET CASH SURRENDER VALUE OF THE POLICY;

3 (5) THE DECEDENT'S LIFE INSURANCE POLICY MAINTAINED IN  
4 ACCORDANCE WITH A COURT ORDER; AND

5 (6) THE DECEDENT'S ONE-HALF OF REAL PROPERTY THAT IS  
6 COMMUNITY PROPERTY UNDER THE LAWS OF THE JURISDICTION WHERE IT IS  
7 LOCATED.

8 3-207.

9 FOR PURPOSES OF § 3-204 OF THIS SUBTITLE, THE VALUE OF AN ELECTIVE  
10 ESTATE IS:

11 (1) FOR THE DECEDENT'S LIFE INSURANCE POLICY THAT MAY BE  
12 INCLUDED UNDER § 3-204(A)(4), (5), OR (9) OF THIS SUBTITLE, THE NET CASH  
13 SURRENDER VALUE OF THE POLICY IMMEDIATELY BEFORE THE DEATH OF THE  
14 DECEDENT;

15 (2) FOR AMOUNTS THAT MAY BE INCLUDED UNDER § 3-204(A)(6) OF  
16 THIS SUBTITLE, THE TRANSFER TAX VALUE THAT EQUALS THE VALUE THE  
17 AMOUNTS WOULD HAVE, FOR PURPOSES OF THE FEDERAL ESTATE AND GIFT TAX  
18 LAWS, IF THE AMOUNTS PASSED WITHOUT CONSIDERATION TO AN UNRELATED  
19 PERSON ON THE APPLICABLE VALUATION DATE;

20 (3) FOR THE DECEDENT'S LIFE INSURANCE POLICY THAT MAY BE  
21 INCLUDED UNDER § 3-204(A)(10) OF THIS SUBTITLE, THE NET CASH SURRENDER  
22 VALUE OF THE POLICY ON THE DATE OF THE TERMINATION OR TRANSFER;

23 (4) FOR OTHER PROPERTY THAT MAY BE INCLUDED UNDER §  
24 3-204(A)(10) OF THIS SUBTITLE, THE FAIR MARKET VALUE OF THE PROPERTY ON THE  
25 DATE OF THE TERMINATION OR TRANSFER, COMPUTED AFTER DEDUCTING ANY  
26 MORTGAGE, LIEN, OR SECURITY INTEREST ON THE PROPERTY AS OF THAT DATE;  
27 AND

28 (5) FOR ALL OTHER PROPERTY, THE FAIR MARKET VALUE OF THE  
29 PROPERTY ON THE DATE OF THE DECEDENT'S DEATH, COMPUTED AFTER  
30 DEDUCTING FROM THE TOTAL VALUE OF THE PROPERTY:

31 (I) ALL CLAIMS, OTHER THAN CLAIMS FOR FUNERAL EXPENSES,  
32 PAID OR PAYABLE FROM THE ELECTIVE ESTATE; AND

33 (II) TO THE EXTENT THEY ARE NOT DEDUCTED UNDER SUBITEM  
34 (I) OF THIS ITEM, ALL MORTGAGES, LIENS, OR SECURITY INTERESTS ON THE  
35 PROPERTY.

36 [3-208.

37 (a) Upon the election of the surviving spouse to take his intestate share of the  
38 property of the decedent, all property or other benefits which would have passed to the  
39 surviving spouse under the will shall be treated as if the surviving spouse had died before

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1 the execution of the will. The surviving spouse and a person claiming through him may  
2 not receive property under the will.

3 (b) If there is an election to take an intestate share, contribution to the payment  
4 of it shall be prorated among all legatees. Instead of contributing an interest in specific  
5 property to the intestate share, a legatee may pay the surviving spouse in cash, or other  
6 property acceptable to the spouse, an amount equal to the fair market value of the  
7 interest in specific property on the date the election to take an intestate share was made  
8 by the spouse. Unless specifically provided in the will, a legatee is not entitled to  
9 sequestration or compensation from another legatee, or from another part of the estate of  
10 the decedent, except that an interest renounced by the surviving spouse and not included  
11 in the share of the net estate received by the surviving spouse under this section may be  
12 subject to sequestration for the benefit of individuals who are the natural objects of the  
13 bounty of the decedent, in order to avoid a substantial distortion of the intended  
14 dispositions of the testator.]

15 3-208.

16 THE ELECTIVE SHARE IS THE GREATER OF:

17 (1) THE MINIMUM ELECTIVE SHARE THAT IS AN AMOUNT EQUAL TO  
18 THE LESSER OF \$50,000 OR ONE-HALF OF THE ELECTIVE ESTATE; OR

19 (2) AN AMOUNT EQUAL TO A PERCENTAGE OF THE ELECTIVE ESTATE  
20 DETERMINED IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

21 BEGIN-TABLE;c=02:006:048

22 <Tr01 >LENGTH OF MARRIAGE BETWEEN

23 <Tr01c>DECEDENT AND SPOUSE

24 <Tc02 >PERCENTAGE OF ELECTIVE

25 <Tc02c>ESTATE

26 <Tr01 >

27 <Tc02 >

28 <Tr01 >LESS THAN 5 YEARS

29 <Tc02c>10%

30 <Tr01 >AT LEAST 5 YEARS BUT LESS THAN 15

31 <Tr01 >YEARS

32 <Tc02 >

33 <Tc02c>20%

34 <Tr01 >AT LEAST 15 YEARS BUT LESS THAN 25

35 <Tr01 >YEARS

36 <Tc02 >

37 <Tc02c>30%

38 <Tr01 >25 YEARS OR MORE

39 <Tc02c>40%

40 <Tc02 >

41 END-TABLE

42 3-209.

43 (A) UNLESS SOURCES FROM WHICH THE ELECTIVE SHARE IS PAYABLE ARE  
44 PROVIDED IN THE WILL OF THE DECEDENT OR IN A TRUST REFERRED TO IN THE  
45 WILL, THE FOLLOWING SOURCES ARE TO BE APPLIED FIRST TO SATISFY THE  
46 ELECTIVE SHARE:

47 (1) TO THE EXTENT PAID TO OR FOR THE BENEFIT OF THE SURVIVING  
48 SPOUSE, THE PROCEEDS OF A TERM OR OTHER INSURANCE POLICY ON THE  
49 DECEDENT'S LIFE, IF THE POLICY WAS OWNED BY A PERSON OTHER THAN THE  
50 SURVIVING SPOUSE AT THE DECEDENT'S DEATH;

51                   (2) TO THE EXTENT PAID TO OR FOR THE BENEFIT OF THE SURVIVING  
52 SPOUSE, AMOUNTS PAYABLE UNDER A PLAN OR ARRANGEMENT UNDER § 3-204(A)(6)  
53 OF THIS SUBTITLE;



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1 (3) PROPERTY INTERESTS INCLUDED IN THE ELECTIVE ESTATE THAT  
2 PASS OR HAVE PASSED TO OR FOR THE BENEFIT OF THE SURVIVING SPOUSE; AND

3 (4) PROPERTY INTERESTS THAT WOULD HAVE SATISFIED THE  
4 ELECTIVE SHARE UNDER ITEM (1), (2), OR (3) OF THIS SUBSECTION BUT WERE  
5 DISCLAIMED.

6 (B) IF THE ELECTIVE SHARE IS NOT FULLY SATISFIED AFTER THE SOURCES  
7 IN SUBSECTION (A) OF THIS SECTION ARE APPLIED, THE UNSATISFIED BALANCE IS  
8 TO BE APPORTIONED AMONG THE DIRECT RECIPIENTS OF THE REMAINING  
9 ELECTIVE ESTATE, AS DEFINED UNDER § 3-210(A) OF THIS SUBTITLE, FROM AMONG  
10 THE FOLLOWING CLASSES IN THIS ORDER OF PRIORITY:

11 (1) CLASS 1: THE DECEDENT'S PROBATE ESTATE AND REVOCABLE  
12 TRUSTS;

13 (2) CLASS 2: RECIPIENTS OF PROPERTY INTERESTS INCLUDED IN THE  
14 ELECTIVE ESTATE UNDER § 3-204(A)(2), (3), OR (5) OF THIS SUBTITLE AND, TO THE  
15 EXTENT THE DECEDENT HAD AT THE TIME OF DEATH THE POWER TO DESIGNATE  
16 THE RECIPIENT OF THE PROPERTY, PROPERTY INTERESTS INCLUDED UNDER §  
17 3-204(A)(6) AND (9) OF THIS SUBTITLE; AND

18 (3) CLASS 3: EXCEPT FOR INTERESTS FOR WHICH A CHARITABLE  
19 DEDUCTION WITH RESPECT TO THE TRANSFER OF THE PROPERTY WAS ALLOWED  
20 OR ALLOWABLE TO THE DECEDENT OR THE SPOUSE OF THE DECEDENT UNDER THE  
21 FEDERAL GIFT TAX LAWS, RECIPIENTS OF ALL OTHER PROPERTY INTERESTS  
22 INCLUDED IN THE ELECTIVE ESTATE.

23 (C) THE CONTRIBUTION REQUIRED OF THE DECEDENT'S PROBATE ESTATE  
24 AND ANY REVOCABLE TRUST MAY BE MADE IN CASH OR IN KIND.

25 (D) UNLESS OTHERWISE PROVIDED IN THE WILL OF THE DECEDENT OR IN A  
26 TRUST REFERRED TO IN THE WILL, AN AMOUNT TO BE SATISFIED FROM THE  
27 PROBATE ESTATE OTHER THAN FROM PROPERTY PASSING TO AN INTER VIVOS  
28 TRUST SHALL BE PAID FROM THE ASSETS OF THE PROBATE ESTATE IN THE  
29 FOLLOWING ORDER:

30 (1) PROPERTY NOT DISPOSED OF BY THE WILL;

31 (2) PROPERTY DEVISED TO ANY RESIDUARY DEVISEE;

32 (3) PROPERTY NOT SPECIFICALLY OR DEMONSTRATIVELY DEVISED;  
33 AND

34 (4) PROPERTY SPECIFICALLY OR DEMONSTRATIVELY DEVISED.

35 (E) UNLESS OTHERWISE PROVIDED IN THE TRUST INSTRUMENT OR IN THE  
36 WILL OF THE DECEDENT, ANY AMOUNT TO BE SATISFIED FROM TRUST PROPERTY IS  
37 TO BE PAID FROM THE ASSETS OF THE TRUST IN THE FOLLOWING ORDER:

38 (1) PROPERTY OF THE RESIDUE OF THE TRUST REMAINING AFTER ALL  
39 DISTRIBUTIONS THAT ARE TO BE SATISFIED BY REFERENCE TO A SPECIFIC  
40 PROPERTY OR TYPE OF PROPERTY, FUND, OR SUM;

9

1 (2) PROPERTY THAT IS NOT TO BE DISTRIBUTED FROM SPECIFIED OR  
2 IDENTIFIED PROPERTY OR A SPECIFIED OR IDENTIFIED ITEM OF PROPERTY; AND

3 (3) PROPERTY THAT IS TO BE DISTRIBUTED FROM SPECIFIED OR  
4 IDENTIFIED PROPERTY OR A SPECIFIED OR IDENTIFIED ITEM OF PROPERTY.

5 (F) (1) SUBSECTIONS (D) AND (E) OF THIS SECTION ARE TO BE APPLIED TO  
6 BENEFICIARIES OF THE PROBATE ESTATE AND REVOCABLE TRUSTS AS IF ALL  
7 BENEFICIARIES WERE TAKING UNDER A COMMON GOVERNING INSTRUMENT.

8 (2) A DIRECTION IN THE WILL OF THE DECEDENT IS EFFECTIVE ONLY  
9 FOR REVOCABLE TRUSTS.

10 3-210.

11 (A) (1) IN THIS SECTION, "DIRECT RECIPIENT" MEANS THE DECEDENT'S  
12 PROBATE ESTATE AND ANY OTHER PERSON WHO RECEIVES PROPERTY INCLUDED  
13 IN THE ELECTIVE ESTATE BY TRANSFER FROM THE DECEDENT BY RIGHT OF  
14 SURVIVORSHIP OR BY BENEFICIARY DESIGNATION UNDER A GOVERNING  
15 INSTRUMENT.

16 (2) IN THE CASE OF PROPERTY HELD IN TRUST, "DIRECT RECIPIENT":

17 (I) INCLUDES THE TRUSTEE; BUT

18 (II) DOES NOT INCLUDE THE BENEFICIARIES OF THE TRUST.

19 (3) IN THE CASE OF AN INSURANCE POLICY ON THE DECEDENT'S LIFE,  
20 THE NET CASH SURRENDER VALUE OF WHICH IS INCLUDED IN THE ELECTIVE  
21 ESTATE, A "DIRECT RECIPIENT" INCLUDES THE BENEFICIARY.

22 (B) EACH BENEFICIARY OF THE DECEDENT'S PROBATE ESTATE OR OF ANY  
23 TRUST THAT IS A DIRECT RECIPIENT AND EACH DIRECT RECIPIENT IS LIABLE TO  
24 CONTRIBUTE TOWARD SATISFACTION OF THE ELECTIVE SHARE.

25 (C) WITHIN EACH CLASS LISTED UNDER § 3-209(B) OF THIS SUBTITLE, EACH  
26 DIRECT RECIPIENT IS LIABLE IN AN AMOUNT EQUAL TO THE VALUE OF THE  
27 PROPORTIONAL PART OF THE LIABILITY FOR ALL MEMBERS OF THE CLASS.

28 (D) (1) EACH TRUST OR PROBATE ESTATE BENEFICIARY WHO RECEIVES A  
29 DISTRIBUTION OF PRINCIPAL AFTER THE DECEDENT'S DEATH IS LIABLE IN AN  
30 AMOUNT EQUAL TO THE VALUE OF THE PRINCIPAL DISTRIBUTED TO THE  
31 BENEFICIARY, MULTIPLIED BY THE CONTRIBUTION PERCENTAGE OF THE  
32 DISTRIBUTING TRUST OR ESTATE.

33 (2) THE CONTRIBUTION PERCENTAGE EQUALS THE REMAINING  
34 UNSATISFIED BALANCE OF THE TRUST OR ESTATE AT THE TIME OF THE  
35 DISTRIBUTION DIVIDED BY THE VALUE OF THE TRUST OR ESTATE.

36 (E) INSTEAD OF PAYING THE AMOUNT FOR WHICH THEY ARE LIABLE,  
37 BENEFICIARIES WHO HAVE RECEIVED A DISTRIBUTION OF PROPERTY INCLUDED IN  
38 THE ELECTIVE ESTATE AND DIRECT RECIPIENTS OTHER THAN THE DECEDENT'S  
39 PROBATE ESTATE OR REVOCABLE TRUST MAY:

10

1 (1) CONTRIBUTE A PROPORTIONAL PART OF ALL PROPERTY RECEIVED;  
2 OR

3 (2) WITH RESPECT TO ANY PROPERTY INTEREST RECEIVED BEFORE  
4 THE DATE OF THE COURT ORDER OF CONTRIBUTION:

5 (I) CONTRIBUTE ALL OF THE PROPERTY; OR

6 (II) IF THE PROPERTY HAS BEEN SOLD OR EXCHANGED BEFORE  
7 THE DATE ON WHICH THE SPOUSE'S ELECTION IS FILED, PAY AN AMOUNT EQUAL TO  
8 THE VALUE OF THE PROPERTY, LESS REASONABLE COSTS OF SALE, ON THE DATE IT  
9 WAS SOLD OR EXCHANGED.

10 (F) IF A PERSON PAYS THE VALUE OF THE PROPERTY ON THE DATE OF A  
11 SALE OR EXCHANGE OR CONTRIBUTES ALL OF THE PROPERTY RECEIVED:

12 (1) NO FURTHER CONTRIBUTION TOWARD SATISFACTION OF THE  
13 ELECTIVE SHARE MAY BE REQUIRED WITH RESPECT TO THE PROPERTY; AND

14 (2) ANY UNSATISFIED CONTRIBUTION MUST BE TREATED AS  
15 ADDITIONAL UNSATISFIED BALANCE AND REAPPORTIONED TO OTHER RECIPIENTS.

16 (G) IF ANY PART OF THIS SUBTITLE IS PREEMPTED BY FEDERAL LAW WITH  
17 RESPECT TO ANY BENEFIT IN THE ELECTIVE ESTATE, INCLUDING A PAYMENT AND  
18 AN ITEM OF PROPERTY, A PERSON WHO, NOT FOR VALUE, RECEIVES THE BENEFIT:

19 (1) SHALL RETURN THE BENEFIT; OR

20 (2) SHALL BE HELD PERSONALLY LIABLE FOR THE AMOUNT OF THE  
21 BENEFIT TO THE PERSON WHO WOULD OTHERWISE HAVE BEEN ENTITLED TO IT.

22 3-211.

23 EXCEPT AS PROVIDED IN § 3-213 OF THIS SUBTITLE, THE VALUE OF PROPERTY  
24 FOR PURPOSES OF PAYING THE ELECTIVE SHARE IS THE FAIR MARKET VALUE OF  
25 THE PROPERTY ON ITS APPLICABLE VALUATION DATE.

26 3-212.

27 THE APPLICABLE VALUATION DATE OF PROPERTY IS:

28 (1) FOR PROPERTY TRANSFERRED IN SATISFACTION OF THE ELECTIVE  
29 SHARE, THE DATE OF THE DEATH OF THE DECEDENT;

30 (2) FOR OTHER PROPERTY IRREVOCABLY TRANSFERRED TO OR FOR  
31 THE BENEFIT OF THE SURVIVING SPOUSE DURING THE DECEDENT'S LIFE, THE DATE  
32 OF THE TRANSFER;

33 (3) FOR PROPERTY DISTRIBUTED TO THE SURVIVING SPOUSE BY THE  
34 PERSONAL REPRESENTATIVE, THE DATE OF DISTRIBUTION;

35 (4) EXCEPT AS PROVIDED IN ITEMS (1) AND (2) OF THIS SECTION, FOR  
36 PROPERTY PASSING IN TRUST FOR THE SURVIVING SPOUSE, THE DATE THE TRUST IS  
37 FUNDED IN SATISFACTION OF THE ELECTIVE SHARE;

11

1 (5) FOR OWNERSHIP INTEREST OF THE DECEDENT IN ACCOUNTS OR  
2 SECURITIES OR THE DECEDENT'S INTEREST IN PROPERTY HELD IN JOINT TENANCY  
3 WITH RIGHT OF SURVIVORSHIP OR IN TENANCY BY THE ENTIRETY, THE DATE OF  
4 THE DECEDENT'S DEATH;

5 (6) FOR PROCEEDS OF A POLICY OF INSURANCE PAYABLE TO THE  
6 SURVIVING SPOUSE, THE DATE OF THE DECEDENT'S DEATH;

7 (7) FOR AMOUNTS PAYABLE TO THE SURVIVING SPOUSE UNDER A  
8 PENSION, RETIREMENT, DEFERRED COMPENSATION PLAN, OR SIMILAR  
9 ARRANGEMENT OTHER THAN BENEFITS PAYABLE UNDER THE FEDERAL RAILROAD  
10 RETIREMENT ACT OR THE SOCIAL SECURITY SYSTEM, THE DATE OF THE  
11 DECEDENT'S DEATH; AND

12 (8) FOR ALL OTHER CASES, THE DATE OF THE DECEDENT'S DEATH OR  
13 THE DATE THE SURVIVING SPOUSE FIRST COMES INTO POSSESSION OF THE  
14 PROPERTY, WHICHEVER OCCURS LATER.

15 3-213.

16 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
17 INDICATED.

18 (2) "ELECTIVE SHARE TRUST" MEANS A TRUST IN WHICH:

19 (I) THE SURVIVING SPOUSE IS ENTITLED FOR LIFE TO THE USE OF  
20 THE PROPERTY OR TO ALL OF THE INCOME PAYABLE AT LEAST AS OFTEN AS  
21 ANNUALLY;

22 (II) THE SURVIVING SPOUSE HAS THE RIGHT UNDER THE TERMS  
23 OF THE TRUST OR STATE LAW TO REQUIRE THE TRUSTEE TO MAKE THE PROPERTY  
24 PRODUCTIVE OR TO CONVERT IT WITHIN A REASONABLE TIME; AND

25 (III) DURING THE SPOUSE'S LIFE, ONLY THE SPOUSE MAY  
26 DISTRIBUTE INCOME OR PRINCIPAL TO ANYONE OTHER THAN THE SPOUSE.

27 (3) "QUALIFYING POWER OF APPOINTMENT" MEANS A GENERAL  
28 POWER OF APPOINTMENT, INCLUDING A GENERAL POWER TO APPOINT BY WILL,  
29 THAT IS EXERCISABLE ALONE AND IN ALL EVENTS BY THE SPOUSE OF THE  
30 DECEDENT IN FAVOR OF THE SPOUSE OR THE ESTATE OF THE SPOUSE.

31 (4) "QUALIFYING INVASION POWER" MEANS A POWER HELD BY THE  
32 SURVIVING SPOUSE OR THE TRUSTEE OF AN ELECTIVE SHARE TRUST TO INVADE  
33 TRUST PRINCIPAL FOR THE HEALTH, SUPPORT, AND MAINTENANCE OF THE SPOUSE.

34 (B) IF THE SURVIVING SPOUSE HAS A LIFE INTEREST IN PROPERTY NOT IN  
35 TRUST THAT ENTITLES THE SPOUSE TO THE USE OF THE PROPERTY FOR LIFE, THE  
36 VALUE OF THE SPOUSE'S INTEREST IS ONE-HALF OF THE VALUE OF THE PROPERTY  
37 ON THE APPLICABLE VALUATION DATE.

38 (C) IF THE SURVIVING SPOUSE HAS AN INTEREST IN A TRUST OR PART OF A  
39 TRUST THAT MEETS THE REQUIREMENTS OF AN ELECTIVE SHARE TRUST, THE  
40 VALUE OF THE INTEREST OF THE SPOUSE IS A PERCENTAGE OF THE VALUE OF THE

12

1 PRINCIPAL OF THE TRUST OR PART OF THE TRUST ON THE APPLICABLE VALUATION  
2 DATE AS FOLLOWS:

3 (1) IF THE TRUST INSTRUMENT INCLUDES BOTH A QUALIFYING  
4 INVASION POWER AND A QUALIFYING POWER OF APPOINTMENT, 100%;

5 (2) IF THE TRUST INSTRUMENT INCLUDES A QUALIFYING INVASION  
6 POWER BUT NOT A QUALIFYING POWER OF APPOINTMENT, 80%; AND

7 (3) FOR ALL OTHER CASES, 50%.

8 3-214.

9 (A) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IF THE  
10 SURVIVING SPOUSE HAS AN INTEREST IN A TRUST THAT DOES NOT MEET THE  
11 REQUIREMENTS OF AN ELECTIVE SHARE TRUST AS SPECIFIED IN § 3-213 OF THIS  
12 SUBTITLE, THE VALUE OF THE INTEREST OF THE SPOUSE IS THE TRANSFER TAX  
13 VALUE OF THE INTEREST THAT IS EQUAL TO THE VALUE THE INTEREST WOULD  
14 HAVE FOR FEDERAL ESTATE AND GIFT TAX LAWS IF IT PASSED WITHOUT  
15 CONSIDERATION TO AN UNRELATED PERSON ON THE APPLICABLE VALUATION  
16 DATE.

17 (2) THE AGGREGATE VALUE OF ALL OF THE INTERESTS OF THE SPOUSE  
18 IN THE TRUST MAY NOT EXCEED ONE-HALF OF THE VALUE OF THE TRUST  
19 PRINCIPAL ON THE APPLICABLE VALUATION DATE.

20 (B) FOR AN INSURANCE POLICY ON THE DECEDENT'S LIFE, THE PROCEEDS  
21 OF WHICH ARE PAYABLE OUTRIGHT OR TO A TRUST, THE VALUE OF THE POLICY  
22 FOR PAYMENT OF THE ELECTIVE SHARE IS THE NET PROCEEDS.

23 (C) FOR A RIGHT TO ONE OR MORE PAYMENTS FROM AN ANNUITY OR  
24 OTHER PLAN OR ARRANGEMENT, THE VALUE OF THE RIGHT TO PAYMENTS FOR  
25 PAYMENT OF THE ELECTIVE SHARE IS THE TRANSFER TAX VALUE OF THE RIGHT ON  
26 THE APPLICABLE VALUATION DATE.

27 3-215.

28 (A) THE ELECTIVE SHARE IS IN ADDITION TO THE FAMILY ALLOWANCE  
29 PROVIDED UNDER § 3-201 OF THIS SUBTITLE.

30 (B) IF AN ELECTION IS FILED, THE BALANCE OF THE ELECTIVE ESTATE,  
31 AFTER THE APPLICATION OF § 3-216 OF THIS SUBTITLE, SHALL BE ADMINISTERED AS  
32 THOUGH THE SURVIVING SPOUSE HAD PREDECEASED THE DECEDENT.

33 3-216.

34 (A) THE COURT SHALL DETERMINE THE ELECTIVE SHARE AND ORDER  
35 CONTRIBUTION.

36 (B) EACH CONTRIBUTION IS TO BEAR INTEREST AT THE RATE SPECIFIED IN §  
37 11-107(A) OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE, BEGINNING 90  
38 DAYS AFTER THE DATE OF THE ORDER.

13

1 (C) THE ORDER OF CONTRIBUTION IS PRIMA FACIE CORRECT IN ANY COURT  
2 PROCEEDING.

3 3-217.

4 (A) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, THE  
5 PERSONAL REPRESENTATIVE SHALL COLLECT CONTRIBUTION FROM THE  
6 RECIPIENTS OF THE ELECTIVE ESTATE.

7 (B) IF PROPERTY WITHIN THE POSSESSION OR CONTROL OF THE PERSONAL  
8 REPRESENTATIVE IS DISTRIBUTABLE TO A BENEFICIARY OR TRUSTEE WHO IS  
9 REQUIRED TO CONTRIBUTE IN SATISFACTION OF THE ELECTIVE SHARE, THE  
10 PERSONAL REPRESENTATIVE SHALL WITHHOLD FROM THE DISTRIBUTION THE  
11 CONTRIBUTION REQUIRED OF THE BENEFICIARY OR TRUSTEE.

12 (C) IF, AFTER THE ORDER OF CONTRIBUTION, THE PERSONAL  
13 REPRESENTATIVE BRINGS AN ACTION TO COLLECT CONTRIBUTION FROM  
14 PROPERTY NOT WITHIN THE PERSONAL REPRESENTATIVE'S CONTROL, THE  
15 JUDGMENT SHALL INCLUDE THE PERSONAL REPRESENTATIVE'S COSTS AND  
16 REASONABLE ATTORNEY'S FEES.

17 (D) THE PERSONAL REPRESENTATIVE IS NOT REQUIRED TO SEEK  
18 COLLECTION OF ANY PART OF THE ELECTIVE SHARE FROM PROPERTY NOT WITHIN  
19 THE PERSONAL REPRESENTATIVE'S CONTROL UNTIL AFTER THE ENTRY OF THE  
20 ORDER OF CONTRIBUTION.

21 (E) (1) A PERSONAL REPRESENTATIVE WHO HAS THE DUTY TO ENFORCE  
22 CONTRIBUTION MAY BE RELIEVED OF THAT DUTY BY COURT ORDER THAT FINDS IT  
23 IS IMPRACTICABLE TO ENFORCE CONTRIBUTION IN VIEW OF THE IMPROBABILITY  
24 OF OBTAINING A JUDGMENT OR THE IMPROBABILITY OF COLLECTION UNDER ANY  
25 JUDGMENT THAT MIGHT BE OBTAINED.

26 (2) THE PERSONAL REPRESENTATIVE MAY NOT BE LIABLE FOR  
27 FAILURE TO ATTEMPT COLLECTION IF THE ATTEMPT WOULD HAVE BEEN  
28 ECONOMICALLY IMPRACTICABLE.

29 3-218.

30 (A) THE SURVIVING SPOUSE HAS AN INDEPENDENT RIGHT TO COLLECT THE  
31 ELECTIVE SHARE AS PROVIDED IN THE ORDER OF CONTRIBUTION.

32 (B) IF THE SURVIVING SPOUSE BRINGS AN ACTION TO ENFORCE AN ORDER  
33 OF CONTRIBUTION, THE JUDGMENT SHALL INCLUDE THE SURVIVING SPOUSE'S  
34 COSTS AND REASONABLE ATTORNEY'S FEES.

35 3-219.

36 A PAYOR OR OTHER THIRD PARTY IS NOT LIABLE FOR:

37 (1) PAYING, DISTRIBUTING, OR TRANSFERRING A PROPERTY INTEREST  
38 IN THE DECEDENT'S ELECTIVE ESTATE TO A BENEFICIARY DESIGNATED IN A  
39 GOVERNING INSTRUMENT; OR

14

1 (2) TAKING ANY OTHER ACTION IN GOOD FAITH RELIANCE ON THE  
2 VALIDITY OF A GOVERNING INSTRUMENT.

3 3-221.

4 The right of election of a surviving spouse may be waived before or after marriage  
5 by a written contract, agreement, or waiver signed by the party waiving the right of  
6 election. Unless it provides to the contrary, a waiver of "all rights" in the property, [or]  
7 estate, OR ELECTIVE ESTATE of a present or prospective spouse, or a complete property  
8 settlement entered into after or in anticipation of separation or divorce, is a waiver of any  
9 right to his family allowance as well as to his elective share by each spouse in the property  
10 of the spouse, his right to letters under § 5-104 OF THIS ARTICLE, and is an irrevocable  
11 renunciation of any benefit which would pass to him from the other by intestate  
12 succession, by statutory share, or by virtue of the provisions of a will executed before the  
13 waiver or property settlement.

14 SECTION 3. AND BE IT FURTHER ENACTED, That, notwithstanding §  
15 3-206(1) of this Act, any trust created by the decedent before October 1, 1997, that meets  
16 the requirements of an elective share trust shall be treated as if the decedent created the  
17 trust after the effective date of this Act and in satisfaction of the elective share.

18 SECTION 4. AND BE IT FURTHER ENACTED, That this Act applies to all  
19 decedents who die on or after October 1, 1998. The law in effect on September 30, 1997,  
20 applies to all decedents who die before October 1, 1998.

21 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 October 1, 1997.