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By: **Delegates Finifter, Morhaim, and Zirkin**  
Introduced and read first time: February 12, 1999  
Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts - Spousal Elective Share**

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

1 who die on or after a certain date; defining certain terms; making certain  
2 technical changes; and generally relating to elective shares for spouses.

3 BY repealing

4 Article - Estates and Trusts  
5 Section 3-203, 3-204, and 3-206 through 3-208, inclusive  
6 Annotated Code of Maryland  
7 (1991 Replacement Volume and 1998 Supplement)

8 BY repealing and reenacting, without amendments,

9 Article - Estates and Trusts  
10 Section 3-201 and 3-202  
11 Annotated Code of Maryland  
12 (1991 Replacement Volume and 1998 Supplement)

13 BY repealing and reenacting, with amendments,

14 Article - Estates and Trusts  
15 Section 3-205 to be under the amended subtitle "Subtitle 2. Family Allowance"  
16 Annotated Code of Maryland  
17 (1991 Replacement Volume and 1998 Supplement)

18 BY adding to

19 Article - Estates and Trusts  
20 Section 3-401 through 3-414 to be under the new subtitle "Subtitle 4. Spousal  
21 Elective Share"  
22 Annotated Code of Maryland  
23 (1991 Replacement Volume and 1998 Supplement)

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

26 **Article - Estates and Trusts**

27 Subtitle 2. Family Allowance [and Statutory Share of Surviving Spouse].

28 3-201.

29 (a) The surviving spouse is entitled to receive an allowance of \$5,000 for  
30 personal use.

31 (b) An allowance of \$2,500 for the use of each unmarried child of the decedent  
32 who has not attained the age of 18 years at the time of the death of the decedent shall  
33 be paid by the personal representative as provided in § 13-501 of this article.

1 3-202.

2 The estates of dower and curtesy are abolished.

3 [3-203.

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

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

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

11 [3-204.

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

17 [3-205.] 3-203.

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

29 [3-206.

30 (a) The election by a surviving spouse to take an elective share shall be made  
31 not later than seven months after the date of the first appointment of a personal  
32 representative under a will. The court may extend the time for election, before its  
33 expiration, for a period not to exceed three months at a time, upon notice given to the  
34 personal representative and for good cause shown.

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

1 [3-207.

2 (a) An election to take an elective share of an estate of a decedent shall be in  
3 writing and signed by the surviving spouse or other person entitled to make the  
4 election pursuant to § 3-204, and shall be filed in the court in which the personal  
5 representative of the decedent was appointed.

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

7 I, A. B., surviving spouse of C. D., late of the County (City) of ....., renounce  
8 all provisions in the will of C. D. and elect to take my elective share of the decedent's  
9 estate.

10 .....  
11 (Signature)]

12 [3-208.

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

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

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

21 (2) Instead of contributing an interest in specific property to the elective  
22 share, a legatee may pay the surviving spouse in cash, or other property acceptable to  
23 the spouse, an amount equal to the fair market value of the interest in specific  
24 property on the date the election to take an elective share was made by the spouse.

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

32 SUBTITLE 4. SPOUSAL ELECTIVE SHARE.

33 3-401.

34 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
35 INDICATED.

1 (B) (1) "DIRECT RECIPIENT" MEANS THE DECEDENT'S PROBATE ESTATE  
2 AND ANY OTHER PERSON WHO RECEIVES PROPERTY INCLUDED IN THE ELECTIVE  
3 ESTATE BY TRANSFER FROM THE DECEDENT, INCLUDING TRANSFERS DESCRIBED IN  
4 § 3-403(8) OF THIS SUBTITLE BY RIGHT OF SURVIVORSHIP, OR BY BENEFICIARY  
5 DESIGNATION UNDER A GOVERNING INSTRUMENT.

6 (2) A BENEFICIARY OF AN INSURANCE POLICY ON THE DECEDENT'S  
7 LIFE, THE NET CASH SURRENDER VALUE OF WHICH IS INCLUDED IN THE ELECTIVE  
8 ESTATE, IS TREATED AS HAVING RECEIVED PROPERTY INCLUDED IN THE ELECTIVE  
9 ESTATE.

10 (3) IN THE CASE OF PROPERTY HELD IN TRUST, "DIRECT RECIPIENT":

11 (I) INCLUDES THE TRUSTEE; BUT

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

13 (C) "ELECTIVE SHARE TRUST" MEANS A TRUST WHETHER CREATED BEFORE  
14 OR AFTER OCTOBER 1, 1999, IN WHICH:

15 (1) THE SURVIVING SPOUSE IS ENTITLED FOR LIFE TO THE USE OF THE  
16 PROPERTY OR TO ALL OF THE INCOME PAYABLE AT LEAST AS OFTEN AS ANNUALLY;

17 (2) THE SURVIVING SPOUSE HAS THE RIGHT UNDER THE TERMS OF THE  
18 TRUST OR STATE LAW TO REQUIRE THE TRUSTEE TO MAKE THE PROPERTY  
19 PRODUCTIVE OR TO CONVERT IT WITHIN A REASONABLE TIME; AND

20 (3) DURING THE SPOUSE'S LIFE, NO PERSON OTHER THAN THE SPOUSE  
21 HAS THE POWER TO DISTRIBUTE INCOME OR PRINCIPAL TO ANYONE OTHER THAN  
22 THE SPOUSE.

23 (D) (1) "GENERAL POWER OF APPOINTMENT" MEANS A POWER OF  
24 APPOINTMENT UNDER WHICH THE HOLDER OF THE POWER, WHETHER OR NOT THE  
25 HOLDER HAS THE CAPACITY TO EXERCISE IT, MAY CREATE A PRESENT OR FUTURE  
26 INTEREST IN:

27 (I) THE HOLDER;

28 (II) THE HOLDER'S ESTATE; OR

29 (III) THE CREDITORS OF THE HOLDER OR THE HOLDER'S ESTATE.

30 (2) "GENERAL POWER OF APPOINTMENT" INCLUDES A POWER TO  
31 CONSUME OR INVADE THE PRINCIPAL OF A TRUST, BUT ONLY IF THE POWER IS NOT  
32 LIMITED BY AN ASCERTAINABLE STANDARD RELATING TO THE HOLDER'S HEALTH,  
33 EDUCATION, SUPPORT, OR MAINTENANCE.

34 (E) "GOVERNING INSTRUMENT" MEANS A DEED, WILL, TRUST, INSURANCE OR  
35 ANNUITY POLICY, ACCOUNT WITH PAYABLE ON DEATH DESIGNATION, SECURITY  
36 REGISTERED IN BENEFICIARY FORM (TRANSFERABLE ON DEATH), PENSION,

1 PROFIT-SHARING PLAN, RETIREMENT PLAN, OR SIMILAR BENEFIT PLAN,  
2 INSTRUMENT CREATING OR EXERCISING A POWER OF APPOINTMENT OR A POWER OF  
3 ATTORNEY, OR A DISPOSITIVE, APPOINTIVE, OR NOMINATIVE INSTRUMENT OF A  
4 SIMILAR TYPE.

5 (F) (1) "PAYOR" MEANS AN INSURER, BUSINESS ENTITY, EMPLOYER,  
6 GOVERNMENTAL UNIT, OR OTHER PERSON WHO IS AUTHORIZED OR OBLIGATED BY  
7 LAW OR A GOVERNING INSTRUMENT TO MAKE PAYMENTS.

8 (2) "PAYOR" DOES NOT INCLUDE THE DECEDENT'S PERSONAL  
9 REPRESENTATIVE OR TRUSTEE OF A TRUST CREATED BY THE DECEDENT.

10 (G) "PERSON" INCLUDES AN INDIVIDUAL, TRUST, ESTATE, PARTNERSHIP,  
11 ASSOCIATION, COMPANY, LIMITED LIABILITY COMPANY, AND CORPORATION.

12 (H) "PROBATE ESTATE" MEANS ALL PROPERTY WHEREVER LOCATED THAT IS  
13 SUBJECT TO ESTATE ADMINISTRATION OR A PROCEEDING IN ANY STATE OR THE  
14 DISTRICT OF COLUMBIA.

15 (I) "REVOCABLE TRUST" MEANS A TRUST THAT MAY BE INCLUDED IN THE  
16 ELECTIVE ESTATE UNDER § 3-403(4) OF THIS SUBTITLE.

17 (J) "TRANSFER IN SATISFACTION OF THE ELECTIVE SHARE" MEANS,  
18 WHETHER CREATED BEFORE OR AFTER OCTOBER 1, 1999, AN IRREVOCABLE  
19 TRANSFER BY THE DECEDENT TO AN ELECTIVE SHARE TRUST.

20 (K) "TRANSFER TAX VALUE" MEANS THE VALUE THE INTEREST WOULD HAVE  
21 FOR PURPOSES OF THE UNITED STATES ESTATE AND GIFT TAX LAWS IF IT PASSED  
22 WITHOUT CONSIDERATION TO AN UNRELATED PERSON ON THE APPLICABLE  
23 VALUATION DATE.

24 3-402.

25 THE SURVIVING SPOUSE OF A DECEDENT WHO DIES DOMICILED IN MARYLAND  
26 HAS THE RIGHT TO A SHARE OF THE ELECTIVE ESTATE OF THE DECEDENT AS  
27 PROVIDED IN THIS SUBTITLE, TO BE DESIGNATED THE ELECTIVE SHARE.

28 3-403.

29 EXCEPT AS PROVIDED IN § 3-404 OF THIS SUBTITLE, THE ELECTIVE ESTATE  
30 CONSISTS OF THE SUM OF THE VALUES AS DETERMINED UNDER § 3-405 OF THIS  
31 SUBTITLE OF THE FOLLOWING PROPERTY INTERESTS:

32 (1) THE DECEDENT'S PROBATE ESTATE;

33 (2) THE DECEDENT'S OWNERSHIP INTEREST IN ACCOUNTS OR  
34 SECURITIES REGISTERED IN PAYABLE ON DEATH (POD), IN TRANSFERABLE ON  
35 DEATH (TOD), IN TRUST FOR (ITF), OR CO-OWNERSHIP WITH RIGHT OF SURVIVORSHIP  
36 FORM, WITH "DECEDENT'S OWNERSHIP INTEREST" MEANING, FOR ACCOUNTS OR  
37 SECURITIES HELD IN TENANCY BY THE ENTIRETY, ONE-HALF THE VALUE OF THE

1 ACCOUNT OR SECURITY AND, IN ALL OTHER CASES, THAT PORTION OF THE  
2 ACCOUNTS OR SECURITIES TRACEABLE TO THE DECEDENT;

3 (3) OTHER THAN PROPERTY DESCRIBED IN PARAGRAPH (2) OF THIS  
4 SECTION, THE DECEDENT'S FRACTIONAL INTEREST IN PROPERTY, WHICH IS  
5 OBTAINED BY DIVIDING THE VALUE OF THE PROPERTY BY THE NUMBER OF  
6 TENANTS AND IS HELD BY THE DECEDENT IN JOINT TENANCY WITH RIGHT OF  
7 SURVIVORSHIP OR IN TENANCY BY THE ENTIRETY;

8 (4) THAT PORTION OF PROPERTY, OTHER THAN PROPERTY DESCRIBED  
9 IN PARAGRAPH (2) OR (7) OF THIS SECTION, TRANSFERRED BY THE DECEDENT TO THE  
10 EXTENT THAT AT THE TIME OF THE DECEDENT'S DEATH THE TRANSFER WAS  
11 REVOCABLE BY THE DECEDENT ALONE OR IN CONJUNCTION WITH ANY OTHER  
12 PERSON, EXCEPT A TRANSFER OF PROPERTY THAT IS REVOCABLE BY THE DECEDENT  
13 ONLY WITH THE CONSENT OF ALL PERSONS HAVING A BENEFICIAL INTEREST IN THE  
14 PROPERTY;

15 (5) (I) THAT PORTION OF PROPERTY, OTHER THAN PROPERTY  
16 DESCRIBED IN PARAGRAPH (3), (4), OR (7) OF THIS SECTION, TRANSFERRED BY THE  
17 DECEDENT TO THE EXTENT THAT AT THE TIME OF THE DECEDENT'S DEATH:

18 1. THE DECEDENT POSSESSED THE RIGHT TO, OR IN FACT  
19 ENJOYED THE POSSESSION OR USE OF, THE INCOME OR PRINCIPAL OF THE  
20 PROPERTY; OR

21 2. THE PRINCIPAL OF THE PROPERTY COULD, IN THE  
22 DISCRETION OF ANY PERSON OTHER THAN THE SPOUSE OF THE DECEDENT, BE  
23 DISTRIBUTED OR APPOINTED TO OR FOR THE BENEFIT OF THE DECEDENT;

24 (II) IN THE APPLICATION OF THIS PARAGRAPH, A RIGHT TO  
25 PAYMENTS FROM AN ANNUITY OR UNDER A SIMILAR CONTRACTUAL ARRANGEMENT  
26 SHALL BE TREATED AS A RIGHT TO THAT PORTION OF THE INCOME OF THE  
27 PROPERTY NECESSARY TO EQUAL THE ANNUITY OR OTHER CONTRACTUAL  
28 PAYMENT;

29 (III) THE AMOUNT INCLUDED UNDER THIS PARAGRAPH:

30 1. WITH RESPECT TO SUBPARAGRAPH (I) OF THIS  
31 PARAGRAPH, IS THE VALUE OF THE PORTION OF THE PROPERTY TO WHICH THE  
32 DECEDENT'S RIGHT OR ENJOYMENT RELATED, TO THE EXTENT THE PORTION  
33 PASSED TO OR FOR THE BENEFIT OF ANY PERSON OTHER THAN THE DECEDENT'S  
34 PROBATE ESTATE; AND

35 2. WITH RESPECT TO SUBPARAGRAPH (II) OF THIS  
36 PARAGRAPH, IS THE VALUE OF THE PORTION SUBJECT TO THE DISCRETION, TO THE  
37 EXTENT THE PORTION PASSED TO OR FOR THE BENEFIT OF ANY PERSON OTHER  
38 THAN THE DECEDENT'S PROBATE ESTATE;

39 (IV) THIS SUBPARAGRAPH DOES NOT APPLY TO ANY PROPERTY IF  
40 THE DECEDENT'S ONLY INTERESTS IN THE PROPERTY ARE THAT:

1                                   1.       THE PROPERTY COULD BE DISTRIBUTED TO OR FOR THE  
2 BENEFIT OF THE DECEDENT ONLY WITH THE CONSENT OF ALL PERSONS HAVING A  
3 BENEFICIAL INTEREST IN THE PROPERTY;

4                                   2.       THE INCOME OR PRINCIPAL OF THE PROPERTY COULD BE  
5 DISTRIBUTED TO OR FOR THE BENEFIT OF THE DECEDENT ONLY THROUGH THE  
6 EXERCISE OR IN DEFAULT OF AN EXERCISE OF A GENERAL POWER OF APPOINTMENT  
7 HELD BY ANY PERSON OTHER THAN THE DECEDENT;

8                                   3.       THE INCOME OR PRINCIPAL OF THE PROPERTY IS OR  
9 COULD BE DISTRIBUTED IN SATISFACTION OF THE DECEDENT'S OBLIGATION OF  
10 SUPPORT; OR

11                                  4.       THE DECEDENT HAD A CONTINGENT RIGHT TO RECEIVE  
12 PRINCIPAL, OTHER THAN AT THE DISCRETION OF ANY PERSON, WHICH  
13 CONTINGENCY WAS BEYOND THE CONTROL OF THE DECEDENT AND WHICH HAD  
14 NOT IN FACT OCCURRED AT THE DECEDENT'S DEATH;

15                                  (6)       THE DECEDENT'S BENEFICIAL INTEREST IN THE NET CASH  
16 SURRENDER VALUE IMMEDIATELY BEFORE DEATH OF ANY POLICY OF INSURANCE  
17 ON THE DECEDENT'S LIFE;

18                                  (7)       THE VALUE OF AMOUNTS PAYABLE TO OR FOR THE BENEFIT OF ANY  
19 PERSON BY REASON OF SURVIVING THE DECEDENT UNDER ANY PUBLIC OR PRIVATE  
20 PENSION, RETIREMENT, OR DEFERRED COMPENSATION PLAN, OR ANY SIMILAR  
21 ARRANGEMENT, OTHER THAN BENEFITS PAYABLE UNDER THE FEDERAL RAILROAD  
22 RETIREMENT ACT OR THE FEDERAL SOCIAL SECURITY SYSTEM. IN THE CASE OF A  
23 DEFINED CONTRIBUTION PLAN AS DEFINED IN § 414(I) OF THE INTERNAL REVENUE  
24 CODE OF 1986, THIS PARAGRAPH DOES NOT APPLY TO THE EXCESS, IF ANY, OF THE  
25 PROCEEDS OF ANY INSURANCE POLICY ON THE DECEDENT'S LIFE OVER THE NET  
26 CASH SURRENDER VALUE OF THE POLICY IMMEDIATELY BEFORE THE DECEDENT'S  
27 DEATH;

28                                  (8)       PROPERTY THAT PASSED DURING THE 1-YEAR PERIOD PRECEDING  
29 THE DECEDENT'S DEATH AS A RESULT OF A TRANSFER BY THE DECEDENT IF THE  
30 TRANSFER WAS EITHER OF THE FOLLOWING TYPES:

31                                   (I)       ANY PROPERTY THAT PASSED AS A RESULT OF THE  
32 TERMINATION OF A RIGHT OR INTEREST IN, OR POWER OVER, PROPERTY THAT  
33 WOULD HAVE BEEN INCLUDED IN THE ELECTIVE ESTATE UNDER PARAGRAPH (4) OR  
34 (5) OF THIS SECTION IF THE RIGHT, INTEREST, OR POWER HAD NOT TERMINATED  
35 UNTIL THE DECEDENT'S DEATH; OR

36                                   (II)       ANY TRANSFER OF PROPERTY TO THE EXTENT NOT OTHERWISE  
37 INCLUDED IN THE ELECTIVE ESTATE, MADE TO OR FOR THE BENEFIT OF ANY  
38 PERSON, EXCEPT:

39                                   1.       ANY TRANSFER OF PROPERTY FOR MEDICAL OR  
40 EDUCATIONAL EXPENSES TO THE EXTENT IT QUALIFIES FOR EXCLUSION FROM THE  
41 UNITED STATES GIFT TAX UNDER § 2503(E) OF THE INTERNAL REVENUE CODE; AND



1                                   2.       AFTER THE APPLICATION OF ITEM 1 OF THIS  
2 SUBPARAGRAPH, THAT AMOUNT OF PROPERTY TRANSFERRED TO OR FOR THE  
3 BENEFIT OF EACH DONEE DURING THE 1-YEAR PERIOD, BUT ONLY TO THE EXTENT  
4 THE TRANSFER QUALIFIES FOR EXCLUSION FROM THE UNITED STATES GIFT TAX  
5 UNDER § 2503(B) OR § 2503(C) OF THE INTERNAL REVENUE CODE;

6                                   (III)   EXCEPT AS PROVIDED IN SUBPARAGRAPH (IV) OF THIS  
7 PARAGRAPH, FOR PURPOSES OF THIS PARAGRAPH:

8                                   1.       A "TERMINATION" WITH RESPECT TO A RIGHT OR  
9 INTEREST IN PROPERTY OCCURS WHEN THE DECEDENT TRANSFERS OR  
10 RELINQUISHES THE RIGHT OR INTEREST, AND, WITH RESPECT TO A POWER OVER  
11 PROPERTY, OCCURS WHEN THE POWER TERMINATES BY EXERCISE, RELEASE, LAPSE,  
12 DEFAULT, OR OTHERWISE; AND

13                                  2.       A DISTRIBUTION FROM A TRUST THE INCOME OR  
14 PRINCIPAL OF WHICH IS SUBJECT TO PARAGRAPH (4), (5), OR (9) OF THIS SECTION  
15 SHALL BE TREATED AS A TRANSFER OF PROPERTY BY THE DECEDENT AND NOT AS A  
16 TERMINATION OF A RIGHT OR INTEREST IN, OR A POWER OVER, PROPERTY;

17                                  (IV)   NOTWITHSTANDING ANYTHING IN SUBPARAGRAPH (III) OF  
18 THIS PARAGRAPH TO THE CONTRARY:

19                                  1.       A "TERMINATION" WITH RESPECT TO A RIGHT OR  
20 INTEREST IN PROPERTY DOES NOT OCCUR WHEN THE RIGHT OR INTEREST  
21 TERMINATES BY THE TERMS OF THE GOVERNING INSTRUMENT UNLESS THE  
22 TERMINATION IS DETERMINED BY REFERENCE TO THE DEATH OF THE DECEDENT  
23 AND THE COURT FINDS A PRINCIPAL PURPOSE FOR THE TERMS OF THE INSTRUMENT  
24 RELATING TO THE TERMINATION WAS AVOIDANCE OF THE ELECTIVE SHARE; AND

25                                  2.       A DISTRIBUTION FROM A TRUST IS NOT SUBJECT TO THIS  
26 SECTION IF THE DISTRIBUTION IS REQUIRED BY THE TERMS OF THE GOVERNING  
27 INSTRUMENT UNLESS THE EVENT TRIGGERING THE DISTRIBUTION IS DETERMINED  
28 BY REFERENCE TO THE DEATH OF THE DECEDENT AND THE COURT FINDS THAT A  
29 PRINCIPAL PURPOSE OF THE TERMS OF THE GOVERNING INSTRUMENT RELATING TO  
30 THE DISTRIBUTION IS AVOIDANCE OF THE ELECTIVE SHARE; OR

31                                  (9)   PROPERTY TRANSFERRED IN SATISFACTION OF THE ELECTIVE  
32 SHARE.

33 3-404.

34       (A)   AN ELECTIVE ESTATE DOES NOT INCLUDE:

35                                  (1)   EXCEPT FOR TRANSFERS TO AN ELECTIVE SHARE TRUST, ANY  
36 TRANSFER OF PROPERTY BY THE DECEDENT TO THE EXTENT THE TRANSFER IS  
37 IRREVOCABLE BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION OR AFTER THAT  
38 DATE BUT BEFORE THE DATE OF THE DECEDENT'S MARRIAGE TO THE SURVIVING  
39 SPOUSE;

1           (2)     ANY TRANSFER OF PROPERTY BY THE DECEDENT TO THE EXTENT  
2 THE DECEDENT RECEIVED ADEQUATE CONSIDERATION IN MONEY OR MONEY'S  
3 WORTH FOR THE TRANSFER;

4           (3)     ANY TRANSFER OF PROPERTY BY THE DECEDENT MADE WITH THE  
5 WRITTEN CONSENT OF THE DECEDENT'S SPOUSE. FOR THIS PURPOSE, SPOUSAL  
6 CONSENT TO SPLIT-GIFT TREATMENT UNDER THE UNITED STATES GIFT TAX LAWS  
7 DOES NOT CONSTITUTE WRITTEN CONSENT TO THE TRANSFER BY THE DECEDENT;

8           (4)     THE PROCEEDS OF ANY POLICY OF INSURANCE ON THE DECEDENT'S  
9 LIFE IN EXCESS OF THE NET CASH SURRENDER VALUE OF THE POLICY WHETHER  
10 PAYABLE TO THE DECEDENT'S ESTATE, A TRUST, OR IN ANY OTHER MANNER;

11          (5)     ANY POLICY OF INSURANCE ON THE DECEDENT'S LIFE MAINTAINED  
12 IN ACCORDANCE WITH A COURT ORDER; AND

13          (6)     REAL PROPERTY THAT IS COMMUNITY PROPERTY UNDER THE LAWS  
14 OF THE JURISDICTION WHERE IT IS LOCATED.

15    (B)    (1)     IF § 3-403(1) OF THIS SUBTITLE AND ANY OTHER PARAGRAPH OF §  
16 3-403 OF THIS SUBTITLE APPLY TO THE SAME PROPERTY INTEREST, THE AMOUNT  
17 INCLUDED IN THE ELECTIVE ESTATE UNDER OTHER PARAGRAPHS IS REDUCED BY  
18 THE AMOUNT INCLUDED UNDER § 3-403(1) OF THIS SUBTITLE.

19          (2)     IN ALL OTHER CASES, IF MORE THAN ONE PARAGRAPH OF § 3-403 OF  
20 THIS SUBTITLE APPLIES TO A PROPERTY INTEREST, ONLY THE PARAGRAPH  
21 RESULTING IN THE LARGEST ELECTIVE ESTATE SHALL APPLY.

22 3-405.

23    FOR PURPOSES OF § 3-403 OF THIS SUBTITLE, "VALUE" MEANS:

24          (1)     IN THE CASE OF ANY POLICY OF INSURANCE ON THE DECEDENT'S  
25 LIFE INCLUDIBLE UNDER § 3-403(4), (5), OR (6) OF THIS SUBTITLE, THE NET CASH  
26 SURRENDER VALUE OF THE POLICY IMMEDIATELY BEFORE THE DECEDENT'S DEATH;

27          (2)     IN THE CASE OF ANY POLICY OF INSURANCE ON THE DECEDENT'S  
28 LIFE INCLUDIBLE UNDER § 3-403(8) OF THIS SUBTITLE, THE NET CASH SURRENDER  
29 VALUE OF THE POLICY ON THE DATE OF THE TERMINATION OR TRANSFER;

30          (3)     IN THE CASE OF AMOUNTS INCLUDIBLE UNDER § 3-403(7) OF THIS  
31 SUBTITLE, THE TRANSFER TAX VALUE OF THE AMOUNTS;

32          (4)     IN THE CASE OF OTHER PROPERTY INCLUDED UNDER § 3-403(8) OF  
33 THIS SUBTITLE, THE FAIR MARKET VALUE OF THE PROPERTY ON THE DATE OF THE  
34 TERMINATION OR TRANSFER, COMPUTED AFTER DEDUCTING ANY MORTGAGES,  
35 LIENS, OR SECURITY INTERESTS ON THE PROPERTY AS OF THAT DATE; OR

1 (5) IN THE CASE OF ALL OTHER PROPERTY, THE FAIR MARKET VALUE OF  
2 THE PROPERTY ON THE DATE OF THE DECEDENT'S DEATH, COMPUTED AFTER  
3 DEDUCTING FROM THE TOTAL VALUE OF THE PROPERTY:

4 (I) ALL CLAIMS, OTHER THAN CLAIMS UNDER § 8-105(A)(1)  
5 THROUGH (4) OF THIS ARTICLE PAID OR PAYABLE FROM THE ELECTIVE ESTATE; AND

6 (II) TO THE EXTENT THEY ARE NOT DEDUCTED UNDER  
7 SUBPARAGRAPH (I) OF THIS PARAGRAPH, ALL MORTGAGES, LIENS, OR SECURITY  
8 INTERESTS ON THE PROPERTY.

9 3-406.

10 (A) THE ELECTIVE SHARE IS THE GREATER OF THE MINIMUM ELECTIVE  
11 SHARE AS DEFINED IN SUBSECTION (B) OF THIS SECTION OR AN AMOUNT EQUAL TO  
12 A PERCENTAGE OF THE ELECTIVE ESTATE DETERMINED IN ACCORDANCE WITH THE  
13 FOLLOWING SCHEDULE:

14 IF THE DECEDENT AND THE SPOUSE  
15 WERE LAST MARRIED TO EACH OTHER: THE PERCENTAGE IS:

16 LESS THAN 5 YEARS 10%

17 AT LEAST 5 YEARS BUT LESS THAN 15  
18 YEARS 20%

19 AT LEAST 15 YEARS BUT LESS THAN 25  
20 YEARS 30%

21 25 YEARS OR MORE 40%

22 (B) "MINIMUM ELECTIVE SHARE" MEANS AN AMOUNT EQUAL TO THE LESSER  
23 OF \$50,000 OR ONE-HALF OF THE ELECTIVE ESTATE.

24 3-407.

25 (A) UNLESS OTHERWISE PROVIDED IN THE DECEDENT'S WILL OR, IN THE  
26 ABSENCE OF A PROVISION IN THE DECEDENT'S WILL, IN A TRUST REFERRED TO IN  
27 THE DECEDENT'S WILL, THE FOLLOWING ARE APPLIED FIRST TO SATISFY THE  
28 ELECTIVE SHARE:

29 (1) TO THE EXTENT PAID TO OR FOR THE BENEFIT OF THE SURVIVING  
30 SPOUSE, THE PROCEEDS OF ANY TERM OR OTHER POLICY OF INSURANCE ON THE  
31 DECEDENT'S LIFE IF, AT THE TIME OF THE DECEDENT'S DEATH, THE POLICY WAS  
32 OWNED BY ANY PERSON OTHER THAN THE SURVIVING SPOUSE;

33 (2) TO THE EXTENT PAID TO OR FOR THE BENEFIT OF THE SURVIVING  
34 SPOUSE, AMOUNTS PAYABLE UNDER ANY PLAN OR ARRANGEMENT DESCRIBED IN §  
35 3-403(7) OF THIS SUBTITLE;

1 (3) TO THE EXTENT PAID TO OR FOR THE BENEFIT OF THE SURVIVING  
2 SPOUSE, THE DECEDENT'S ONE-HALF OF ANY PROPERTY DESCRIBED IN § 3-404(A)(6)  
3 OF THIS SUBTITLE;

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

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

9 (B) IF, AFTER THE APPLICATION OF SUBSECTION (A) OF THIS SECTION, THE  
10 ELECTIVE SHARE IS NOT FULLY SATISFIED, THE UNSATISFIED BALANCE SHALL BE  
11 APPORTIONED AMONG THE DIRECT RECIPIENTS OF THE REMAINING ELECTIVE  
12 ESTATE IN THE FOLLOWING ORDER OF PRIORITY:

13 (1) CLASS 1 -- THE DECEDENT'S PROBATE ESTATE AND REVOCABLE  
14 TRUSTS;

15 (2) CLASS 2 -- RECIPIENTS OF PROPERTY INTERESTS INCLUDED IN THE  
16 ELECTIVE ESTATE UNDER § 3-403(2), (3), OR (6) OF THIS SUBTITLE AND, TO THE  
17 EXTENT THE DECEDENT HAD AT THE TIME OF DEATH THE POWER TO DESIGNATE  
18 THE RECIPIENT OF THE PROPERTY, PROPERTY INTERESTS INCLUDED UNDER § 3-403  
19 (5) AND (7) OF THIS SUBTITLE; AND

20 (3) CLASS 3 -- RECIPIENTS OF ALL OTHER PROPERTY INTERESTS  
21 INCLUDED IN THE ELECTIVE ESTATE EXCEPT INTERESTS FOR WHICH A CHARITABLE  
22 DEDUCTION WITH RESPECT TO THE TRANSFER OF THE PROPERTY WAS ALLOWED OR  
23 ALLOWABLE TO THE DECEDENT OR THE DECEDENT'S SPOUSE UNDER THE UNITED  
24 STATES GIFT TAX LAWS.

25 (C) THE CONTRIBUTION REQUIRED OF THE DECEDENT'S PROBATE ESTATE  
26 AND REVOCABLE TRUSTS MAY BE MADE IN CASH OR IN KIND. IN THE APPLICATION  
27 OF THIS SUBSECTION, SUBSECTIONS (D) AND (E) OF THIS SECTION ARE TO BE  
28 APPLIED TO CHARGE CONTRIBUTION FOR THE ELECTIVE SHARE TO THE  
29 BENEFICIARIES OF THE PROBATE ESTATE AND REVOCABLE TRUSTS AS IF ALL  
30 BENEFICIARIES WERE TAKING UNDER A COMMON GOVERNING INSTRUMENT.

31 (D) UNLESS OTHERWISE PROVIDED IN THE DECEDENT'S WILL OR, IN THE  
32 ABSENCE OF A PROVISION IN THE DECEDENT'S WILL, IN A TRUST REFERRED TO IN  
33 THE DECEDENT'S WILL, ANY AMOUNT TO BE SATISFIED FROM THE DECEDENT'S  
34 PROBATE ESTATE, OTHER THAN FROM PROPERTY PASSING TO AN INTER VIVOS  
35 TRUST, SHALL BE PAID FROM THE ASSETS OF THE PROBATE ESTATE IN THIS ORDER:

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

37 (2) PROPERTY DEVISED TO THE RESIDUARY DEVISEE OR DEVISEES;

38 (3) PROPERTY NOT SPECIFICALLY OR DEMONSTRATIVELY DEVISED;  
39 AND

1 (4) PROPERTY SPECIFICALLY OR DEMONSTRATIVELY DEVISED.

2 (E) (1) UNLESS OTHERWISE PROVIDED IN THE TRUST INSTRUMENT, OR IN  
3 THE DECEDENT'S WILL IF THERE IS NO PROVISION IN THE TRUST INSTRUMENT, ANY  
4 AMOUNT TO BE SATISFIED FROM TRUST PROPERTY SHALL BE PAID FROM THE  
5 ASSETS OF THE TRUST IN THIS ORDER:

6 (I) PROPERTY OF THE RESIDUE OF THE TRUST REMAINING AFTER  
7 ALL DISTRIBUTIONS THAT ARE TO BE SATISFIED BY REFERENCE TO A SPECIFIC  
8 PROPERTY OR TYPE OF PROPERTY, FUND, OR SUM;

9 (II) PROPERTY THAT IS NOT TO BE DISTRIBUTED FROM SPECIFIED  
10 OR IDENTIFIED PROPERTY OR A SPECIFIED OR IDENTIFIED ITEM OF PROPERTY; AND

11 (III) PROPERTY THAT IS TO BE DISTRIBUTED FROM SPECIFIED OR  
12 IDENTIFIED PROPERTY OR A SPECIFIED OR IDENTIFIED ITEM OF PROPERTY.

13 (2) A DIRECTION IN THE DECEDENT'S WILL IS EFFECTIVE ONLY FOR  
14 REVOCABLE TRUSTS.

15 3-408.

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

18 (2) "CONTRIBUTION PERCENTAGE" MEANS THE REMAINING  
19 UNSATISFIED BALANCE OF THE TRUST OR ESTATE AT THE TIME OF THE  
20 DISTRIBUTION DIVIDED BY THE VALUE OF THE TRUST OR ESTATE AS DETERMINED  
21 UNDER § 3-405 OF THIS SUBTITLE.

22 (3) "REMAINING UNSATISFIED BALANCE" MEANS THE AMOUNT OF  
23 LIABILITY INITIALLY APPORTIONED TO THE TRUST OR ESTATE REDUCED BY  
24 AMOUNTS OR PROPERTY PREVIOUSLY CONTRIBUTED BY ANY PERSON IN  
25 SATISFACTION OF THAT LIABILITY.

26 (B) (1) DIRECT RECIPIENTS OF PROPERTY INCLUDED IN THE ELECTIVE  
27 ESTATE AND THE BENEFICIARIES OF THE DECEDENT'S PROBATE ESTATE OR OF ANY  
28 TRUST THAT IS A DIRECT RECIPIENT ARE LIABLE TO CONTRIBUTE TOWARD  
29 SATISFACTION OF THE ELECTIVE SHARE.

30 (2) WITHIN EACH OF THE CLASSES DESCRIBED IN § 3-407(B)(2) AND (3) OF  
31 THIS SUBTITLE, EACH DIRECT RECIPIENT IS LIABLE IN AN AMOUNT EQUAL TO THE  
32 VALUE, AS DETERMINED UNDER § 3-405 OF THIS SUBTITLE OF THE PROPORTIONAL  
33 PART OF THE LIABILITY FOR ALL MEMBERS OF THE CLASS.

34 (3) TRUST AND PROBATE ESTATE BENEFICIARIES WHO RECEIVE A  
35 DISTRIBUTION OF PRINCIPAL AFTER THE DECEDENT'S DEATH ARE LIABLE IN AN  
36 AMOUNT EQUAL TO THE VALUE OF THE PRINCIPAL DISTRIBUTED TO THEM  
37 MULTIPLIED BY THE CONTRIBUTION PERCENTAGE OF THE DISTRIBUTING TRUST OR  
38 ESTATE.

1 (C) (1) INSTEAD OF PAYING THE AMOUNT FOR WHICH THEY ARE LIABLE,  
2 BENEFICIARIES WHO HAVE RECEIVED A DISTRIBUTION OF PROPERTY INCLUDED IN  
3 THE ELECTIVE ESTATE AND DIRECT RECIPIENTS OTHER THAN THE DECEDENT'S  
4 PROBATE ESTATE OR REVOCABLE TRUSTS MAY:

5 (I) CONTRIBUTE A PROPORTIONAL PART OF ALL PROPERTY  
6 RECEIVED; OR

7 (II) WITH RESPECT TO ANY PROPERTY INTEREST RECEIVED  
8 BEFORE THE DATE OF THE COURT'S ORDER OF CONTRIBUTION:

9 1. CONTRIBUTE ALL OF THE PROPERTY; OR

10 2. IF THE PROPERTY HAS BEEN SOLD OR EXCHANGED PRIOR  
11 TO THE DATE ON WHICH THE SPOUSE'S ELECTION IS FILED, PAY AN AMOUNT EQUAL  
12 TO THE VALUE OF THE PROPERTY, LESS REASONABLE COSTS OF SALE, ON THE DATE  
13 IT WAS SOLD OR EXCHANGED.

14 (2) IN THE APPLICATION OF PARAGRAPH (1) OF THIS SUBSECTION, THE  
15 PROPORTIONAL PART OF ALL PROPERTY RECEIVED IS DETERMINED SEPARATELY  
16 FOR EACH CLASS OF PRIORITY UNDER § 3-407(B) OF THIS SUBTITLE.

17 (D) IF A PERSON PAYS THE VALUE OF THE PROPERTY ON THE DATE OF A SALE  
18 OR EXCHANGE OR CONTRIBUTES ALL OF THE PROPERTY RECEIVED, AS PROVIDED IN  
19 SUBSECTION (C)(1)(II) OF THIS SECTION:

20 (1) NO FURTHER CONTRIBUTION TOWARD SATISFACTION OF THE  
21 ELECTIVE SHARE SHALL BE REQUIRED WITH RESPECT TO SUCH PROPERTY; AND

22 (2) ANY UNSATISFIED CONTRIBUTION IS TREATED AS ADDITIONAL  
23 UNSATISFIED BALANCE AND REAPPORTIONED TO OTHER RECIPIENTS AS PROVIDED  
24 IN THIS SECTION AND § 3-407 OF THIS SUBTITLE.

25 (E) IF ANY PROVISION OF § 3-403 OR § 3-407 OF THIS SUBTITLE IS PREEMPTED  
26 BY FEDERAL LAW WITH RESPECT TO A PAYMENT, AN ITEM OF PROPERTY, OR ANY  
27 OTHER BENEFIT INCLUDED IN THE ELECTIVE ESTATE, A PERSON WHO, NOT FOR  
28 VALUE, RECEIVES THE PAYMENT, ITEM OF PROPERTY, OR ANY OTHER BENEFIT IS  
29 OBLIGATED TO RETURN THE PAYMENT, ITEM OF PROPERTY, OR BENEFIT, OR IS  
30 PERSONALLY LIABLE FOR THE AMOUNT OF THE PAYMENT OR THE VALUE OF THAT  
31 ITEM OF PROPERTY OR BENEFIT, AS PROVIDED IN §§ 3-403 AND 3-407 OF THIS  
32 SUBTITLE, TO THE PERSON WHO WOULD HAVE BEEN ENTITLED TO IT WERE THAT  
33 SECTION OR PART OF THAT SECTION NOT PREEMPTED.

34 3-409.

35 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
36 INDICATED.

37 (2) "APPLICABLE VALUATION DATE" MEANS:

1 (I) IN THE CASE OF TRANSFERS IN SATISFACTION OF THE  
2 ELECTIVE SHARE, THE DATE OF THE DECEDENT'S DEATH;

3 (II) IN THE CASE OF OTHER PROPERTY IRREVOCABLY  
4 TRANSFERRED TO OR FOR THE BENEFIT OF THE SURVIVING SPOUSE DURING THE  
5 DECEDENT'S LIFE, THE DATE OF THE TRANSFER;

6 (III) IN THE CASE OF PROPERTY DISTRIBUTED TO THE SURVIVING  
7 SPOUSE BY THE PERSONAL REPRESENTATIVE, THE DATE OF DISTRIBUTION;

8 (IV) EXCEPT AS PROVIDED IN ITEMS (I) AND (II) OF THIS  
9 PARAGRAPH, IN THE CASE OF PROPERTY PASSING IN TRUST FOR THE SURVIVING  
10 SPOUSE, THE DATE OR DATES THE TRUST IS FUNDED IN SATISFACTION OF THE  
11 ELECTIVE SHARE;

12 (V) IN THE CASE OF PROPERTY DESCRIBED IN § 3-403(2) AND (3) OF  
13 THIS SUBTITLE, THE DATE OF THE DECEDENT'S DEATH;

14 (VI) IN THE CASE OF PROCEEDS OF ANY POLICY OF INSURANCE  
15 PAYABLE TO THE SURVIVING SPOUSE, THE DATE OF THE DECEDENT'S DEATH;

16 (VII) IN THE CASE OF AMOUNTS PAYABLE TO THE SURVIVING  
17 SPOUSE UNDER ANY PLAN OR ARRANGEMENT DESCRIBED IN § 3-403(7) OF THIS  
18 SUBTITLE, THE DATE OF THE DECEDENT'S DEATH; AND

19 (VIII) IN ALL OTHER CASES, THE DATE OF THE DECEDENT'S DEATH  
20 OR THE DATE THE SURVIVING SPOUSE FIRST COMES INTO POSSESSION OF THE  
21 PROPERTY, WHICHEVER OCCURS LATER.

22 (3) (I) "QUALIFYING POWER OF APPOINTMENT" MEANS A GENERAL  
23 POWER OF APPOINTMENT THAT IS EXERCISABLE ALONE AND IN ALL EVENTS BY THE  
24 DECEDENT'S SPOUSE IN FAVOR OF THE SPOUSE OR THE SPOUSE'S ESTATE.

25 (II) FOR THIS PURPOSE, A GENERAL POWER TO APPOINT BY WILL IS  
26 A QUALIFYING POWER OF APPOINTMENT IF THE POWER MAY BE EXERCISED BY THE  
27 SPOUSE IN FAVOR OF THE SPOUSE'S ESTATE WITHOUT THE CONSENT OF ANY OTHER  
28 PERSON.

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

33 (II) THE POWER MAY, BUT NEED NOT, PROVIDE THAT THE OTHER  
34 RESOURCES OF THE SPOUSE ARE TO BE TAKEN INTO ACCOUNT IN ANY EXERCISE OF  
35 THE POWER.

36 (B) (1) EXCEPT AS PROVIDED IN THIS SUBSECTION, THE VALUE OF  
37 PROPERTY FOR PURPOSES OF § 3-407 OF THIS SUBTITLE IS THE FAIR MARKET VALUE  
38 OF THE PROPERTY ON THE APPLICABLE VALUATION DATE.

1 (2) IF THE SURVIVING SPOUSE HAS A LIFE INTEREST IN PROPERTY NOT  
2 IN TRUST THAT ENTITLES THE SPOUSE TO THE USE OF THE PROPERTY FOR LIFE, THE  
3 VALUE OF THE SPOUSE'S INTEREST IS ONE-HALF OF THE VALUE OF THE PROPERTY  
4 ON THE APPLICABLE VALUATION DATE.

5 (3) IF THE SURVIVING SPOUSE HAS AN INTEREST IN A TRUST OR  
6 PORTION OF A TRUST THAT MEETS THE REQUIREMENTS OF AN ELECTIVE SHARE  
7 TRUST, THE VALUE OF THE SPOUSE'S INTEREST IS A PERCENTAGE OF THE VALUE OF  
8 THE PRINCIPAL OF THE TRUST OR PORTION OF A TRUST ON THE APPLICABLE  
9 VALUATION DATE AS FOLLOWS:

10 (I) 100%, IF THE TRUST INSTRUMENT INCLUDES BOTH A  
11 QUALIFYING INVASION POWER AND A QUALIFYING POWER OF APPOINTMENT;

12 (II) 80%, IF THE TRUST INSTRUMENT INCLUDES A QUALIFYING  
13 INVASION POWER BUT NO QUALIFYING POWER OF APPOINTMENT; AND

14 (III) 50% IN ALL OTHER CASES.

15 (4) IF THE SURVIVING SPOUSE HAS AN INTEREST IN A TRUST THAT  
16 DOES NOT MEET THE REQUIREMENTS OF AN ELECTIVE SHARE TRUST, THE VALUE  
17 OF THE SPOUSE'S INTEREST IS THE TRANSFER TAX VALUE OF THE INTEREST;  
18 PROVIDED, THE AGGREGATE VALUE OF ALL OF THE SPOUSE'S INTERESTS IN THE  
19 TRUST SHALL NOT EXCEED ONE-HALF OF THE VALUE OF THE TRUST PRINCIPAL ON  
20 THE APPLICABLE VALUATION DATE.

21 (5) IN THE CASE OF ANY POLICY OF INSURANCE ON THE DECEDENT'S  
22 LIFE THE PROCEEDS OF WHICH ARE PAYABLE OUTRIGHT OR TO A TRUST DESCRIBED  
23 IN PARAGRAPH (3) OR (4) OF THIS SUBSECTION, THE VALUE OF THE POLICY FOR  
24 PURPOSES OF § 3-407 OF THIS SUBTITLE AND PARAGRAPHS (3) AND (4) OF THIS  
25 SUBSECTION IS THE NET PROCEEDS.

26 (6) IN THE CASE OF A RIGHT TO ONE OR MORE PAYMENTS FROM AN  
27 ANNUITY OR UNDER A SIMILAR CONTRACTUAL ARRANGEMENT OR UNDER ANY PLAN  
28 OR ARRANGEMENT DESCRIBED IN § 3-403(7) OF THIS SUBTITLE, THE VALUE OF THE  
29 RIGHT TO PAYMENTS FOR PURPOSES OF § 3-407 OF THIS SUBTITLE AND PARAGRAPHS  
30 (3) AND (4) OF THIS SUBSECTION IS THE TRANSFER TAX VALUE OF THE RIGHT ON THE  
31 APPLICABLE VALUATION DATE.

32 3-410.

33 IF AN ELECTION IS FILED, THE BALANCE OF THE ELECTIVE ESTATE, AFTER THE  
34 APPLICATION OF § 3-414(A) OF THIS SUBTITLE, SHALL BE ADMINISTERED AS THOUGH  
35 THE SURVIVING SPOUSE HAD PREDECEASED THE DECEDENT.

36 3-411.

37 ALTHOUGH A PROPERTY INTEREST IS INCLUDED IN THE DECEDENT'S  
38 ELECTIVE ESTATE UNDER § 3-403(2) THROUGH (8) OF THIS SUBTITLE, A PAYOR OR  
39 OTHER THIRD PARTY IS NOT LIABLE FOR PAYING, DISTRIBUTING, OR TRANSFERRING



1 THE PROPERTY TO A BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT, OR  
2 FOR TAKING ANY OTHER ACTION IN GOOD FAITH RELIANCE ON THE VALIDITY OF A  
3 GOVERNING INSTRUMENT.

4 3-412.

5 (A) THE RIGHT OF ELECTION MAY BE EXERCISED:

6 (1) BY THE SURVIVING SPOUSE; OR

7 (2) WITH APPROVAL OF THE COURT HAVING JURISDICTION OF THE  
8 PROBATE PROCEEDING, BY AN ATTORNEY IN FACT OR GUARDIAN OF THE PROPERTY  
9 OF THE SURVIVING SPOUSE.

10 (B) THE COURT SHALL DETERMINE THE ELECTION AS THE BEST INTERESTS  
11 OF THE SURVIVING SPOUSE, DURING THE SPOUSE'S PROBABLE LIFETIME, REQUIRE.

12 3-413.

13 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE  
14 ELECTION MUST BE FILED WITHIN THE EARLIER OF 6 MONTHS OF THE DATE OF THE  
15 FIRST PUBLICATION OF NOTICE OF ADMINISTRATION OR 2 YEARS AFTER THE DATE  
16 OF THE DECEDENT'S DEATH.

17 (B) (1) WITHIN THE PERIOD PROVIDED IN SUBSECTION (A) OF THIS  
18 SECTION, THE SURVIVING SPOUSE OR AN ATTORNEY IN FACT OR GUARDIAN OF THE  
19 PROPERTY OF THE SURVIVING SPOUSE MAY PETITION THE COURT FOR AN  
20 EXTENSION OF TIME FOR MAKING AN ELECTION.

21 (2) AFTER NOTICE AND HEARING, THE COURT FOR GOOD CAUSE SHOWN  
22 MAY EXTEND THE TIME FOR ELECTION.

23 (3) IF THE COURT GRANTS THE PETITION FOR AN EXTENSION, THE  
24 ELECTION SHALL BE FILED WITHIN THE TIME ALLOWED BY THE EXTENSION.

25 (C) (1) THE SURVIVING SPOUSE OR AN ATTORNEY IN FACT, GUARDIAN OF  
26 THE PROPERTY, OR PERSONAL REPRESENTATIVE OF THE SURVIVING SPOUSE MAY  
27 WITHDRAW AN ELECTION AT ANY TIME WITHIN 8 MONTHS OF THE DECEDENT'S  
28 DEATH AND BEFORE THE COURT'S ORDER OF CONTRIBUTION.

29 (2) IF AN ELECTION IS WITHDRAWN, THE COURT MAY ASSESS  
30 ATTORNEY'S FEES AND COSTS AGAINST THE SURVIVING SPOUSE OR THE SPOUSE'S  
31 ESTATE.

32 (D) A PETITION FOR AN EXTENSION OF THE TIME FOR MAKING THE ELECTION  
33 OR FOR APPROVAL TO MAKE THE ELECTION SHALL TOLL THE TIME FOR MAKING THE  
34 ELECTION.

1 3-414.

2 (A) (1) THE COURT SHALL DETERMINE THE ELECTIVE SHARE AND SHALL  
3 ORDER CONTRIBUTION.

4 (2) ALL CONTRIBUTIONS ARE TO BEAR INTEREST AT 12% A YEAR  
5 BEGINNING 90 DAYS FROM THE DATE OF THE ORDER.

6 (3) THE ORDER OF CONTRIBUTION IS PRIMA FACIE CORRECT IN  
7 PROCEEDINGS IN ANY COURT OR JURISDICTION.

8 (B) (1) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE  
9 PERSONAL REPRESENTATIVE SHALL COLLECT CONTRIBUTION FROM THE DIRECT  
10 RECIPIENTS OF THE ELECTIVE ESTATE AS PROVIDED IN THE COURT'S ORDER OF  
11 CONTRIBUTION.

12 (2) IF PROPERTY WITHIN THE POSSESSION OR CONTROL OF THE  
13 PERSONAL REPRESENTATIVE IS DISTRIBUTABLE TO A BENEFICIARY OR TRUSTEE  
14 WHO IS REQUIRED TO CONTRIBUTE IN SATISFACTION OF THE ELECTIVE SHARE, THE  
15 PERSONAL REPRESENTATIVE SHALL WITHHOLD FROM THE DISTRIBUTION THE  
16 CONTRIBUTION REQUIRED OF THE BENEFICIARY OR TRUSTEE.

17 (3) (I) IF, AFTER THE ORDER OF CONTRIBUTION, THE PERSONAL  
18 REPRESENTATIVE BRINGS AN ACTION TO COLLECT CONTRIBUTION FROM PROPERTY  
19 NOT WITHIN THE PERSONAL REPRESENTATIVE'S CONTROL, THE JUDGMENT SHALL  
20 INCLUDE THE PERSONAL REPRESENTATIVE'S COSTS AND REASONABLE ATTORNEY'S  
21 FEES.

22 (II) THE PERSONAL REPRESENTATIVE IS NOT REQUIRED TO SEEK  
23 COLLECTION OF ANY PORTION OF THE ELECTIVE SHARE FROM PROPERTY NOT  
24 WITHIN THE PERSONAL REPRESENTATIVE'S CONTROL UNTIL AFTER THE ENTRY OF  
25 THE ORDER OF CONTRIBUTION.

26 (C) (1) A PERSONAL REPRESENTATIVE WHO HAS THE DUTY UNDER THIS  
27 SECTION OF ENFORCING CONTRIBUTION, MAY BE RELIEVED OF THAT DUTY BY AN  
28 ORDER OF THE COURT FINDING THAT IT IS IMPRACTICABLE TO ENFORCE  
29 CONTRIBUTION IN VIEW OF THE IMPROBABILITY OF OBTAINING A JUDGMENT OR  
30 THE IMPROBABILITY OF COLLECTION UNDER ANY JUDGMENT THAT MIGHT BE  
31 OBTAINED, OR OTHERWISE.

32 (2) THE PERSONAL REPRESENTATIVE IS NOT LIABLE FOR FAILURE TO  
33 ATTEMPT COLLECTION IF THE ATTEMPT WOULD HAVE BEEN ECONOMICALLY  
34 IMPRACTICABLE.

35 (D) (1) NOTHING IN THIS SECTION LIMITS THE INDEPENDENT RIGHT OF  
36 THE SURVIVING SPOUSE TO COLLECT THE ELECTIVE SHARE AS PROVIDED IN THE  
37 ORDER OF CONTRIBUTION AND THAT RIGHT IS HEREBY CONFERRED.

1           (2)       IF THE SURVIVING SPOUSE BRINGS AN ACTION TO ENFORCE AN  
2 ORDER OF CONTRIBUTION, THE JUDGMENT SHALL INCLUDE THE SURVIVING  
3 SPOUSE'S COSTS AND REASONABLE ATTORNEY'S FEES.

4       SECTION 2. AND BE IT FURTHER ENACTED, That this Act applies to all  
5 decedents who die on or after October 1, 1999. The law in effect on September 30,  
6 1999, applies to all decedents who die before October 1, 1999.

7       SECTION 3. AND BE IT FURTHER ENACTED, That a waiver of elective  
8 share rights before the effective date of this Act may not be affected by the passage of  
9 this Act.

10       SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
11 October 1, 1999.