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By: **Delegates Finifter, Morhaim, Montague, and Doory**  
Introduced and read first time: January 27, 2000  
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 a certain person to collect the elective  
27 share in the order of contribution; requiring a certain judgment to include  
28 certain costs, fees, and interests; specifying the requirements for electing to take  
29 an elective share; providing that this Act applies to decedents who die on or after  
30 a certain date; defining certain terms; making certain technical changes; and  
31 generally relating to elective shares for spouses.

32 BY repealing  
33 Article - Estates and Trusts  
34 Section 3-203, 3-204, and 3-206 through 3-208, inclusive

1 Annotated Code of Maryland  
2 (1991 Replacement Volume and 1999 Supplement)

3 BY repealing and reenacting, without amendments,  
4 Article - Estates and Trusts  
5 Section 3-201 and 3-202  
6 Annotated Code of Maryland  
7 (1991 Replacement Volume and 1999 Supplement)

8 BY repealing and reenacting, with amendments,  
9 Article - Estates and Trusts  
10 Section 3-205 to be under the amended subtitle "Subtitle 2. Family Allowance"  
11 Annotated Code of Maryland  
12 (1991 Replacement Volume and 1999 Supplement)

13 BY adding to  
14 Article - Estates and Trusts  
15 Section 3-401 through 3-414 to be under the new subtitle "Subtitle 4. Spousal  
16 Elective Share"  
17 Annotated Code of Maryland  
18 (1991 Replacement Volume and 1999 Supplement)

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

21 **Article - Estates and Trusts**

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

23 3-201.

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

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

29 3-202.

30 The estates of dower and curtesy are abolished.

31 [3-203.

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

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

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

5 [3-204.

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

11 [3-205.] 3-203.

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

23 [3-206.

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

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

31 [3-207.

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

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

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

4 .....  
5 (Signature)]

6 [3-208.

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

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

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

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

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

26 SUBTITLE 4. SPOUSAL ELECTIVE SHARE.

27 3-401.

28 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
29 INDICATED.

30 (B) (1) "DIRECT RECIPIENT" MEANS THE DECEDENT'S PROBATE ESTATE  
31 AND ANY OTHER PERSON WHO RECEIVES PROPERTY INCLUDED IN THE ELECTIVE  
32 ESTATE BY TRANSFER FROM THE DECEDENT, INCLUDING TRANSFERS DESCRIBED IN  
33 § 3-403(8) OF THIS SUBTITLE BY RIGHT OF SURVIVORSHIP, OR BY BENEFICIARY  
34 DESIGNATION UNDER A GOVERNING INSTRUMENT.

35 (2) A BENEFICIARY OF AN INSURANCE POLICY ON THE DECEDENT'S  
36 LIFE, THE NET CASH SURRENDER VALUE OF WHICH IS INCLUDED IN THE ELECTIVE

1 ESTATE, IS TREATED AS HAVING RECEIVED PROPERTY INCLUDED IN THE ELECTIVE  
2 ESTATE.

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

4 (I) INCLUDES THE TRUSTEE; BUT

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

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

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

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

13 (3) DURING THE SPOUSE'S LIFE, NO PERSON OTHER THAN THE SPOUSE  
14 HAS THE POWER TO DISTRIBUTE INCOME OR PRINCIPAL TO ANYONE OTHER THAN  
15 THE SPOUSE.

16 (D) (1) "GENERAL POWER OF APPOINTMENT" MEANS A POWER OF  
17 APPOINTMENT UNDER WHICH THE HOLDER OF THE POWER, WHETHER OR NOT THE  
18 HOLDER HAS THE CAPACITY TO EXERCISE IT, MAY CREATE A PRESENT OR FUTURE  
19 INTEREST IN:

20 (I) THE HOLDER;

21 (II) THE HOLDER'S ESTATE; OR

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

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

27 (E) "GOVERNING INSTRUMENT" MEANS A DEED, WILL, TRUST, INSURANCE OR  
28 ANNUITY POLICY, ACCOUNT WITH PAYABLE ON DEATH DESIGNATION, SECURITY  
29 REGISTERED IN BENEFICIARY FORM (TRANSFERABLE ON DEATH), PENSION,  
30 PROFIT-SHARING PLAN, RETIREMENT PLAN, OR SIMILAR BENEFIT PLAN,  
31 INSTRUMENT CREATING OR EXERCISING A POWER OF APPOINTMENT OR A POWER OF  
32 ATTORNEY, OR A DISPOSITIVE, APPOINTIVE, OR NOMINATIVE INSTRUMENT OF A  
33 SIMILAR TYPE.

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

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

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

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

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

10 (J) "TRANSFER IN SATISFACTION OF THE ELECTIVE SHARE" MEANS,  
11 WHETHER CREATED BEFORE OR AFTER OCTOBER 1, 2000, AN IRREVOCABLE  
12 TRANSFER BY THE DECEDENT TO AN ELECTIVE SHARE TRUST.

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

17 3-402.

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

21 3-403.

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

25 (1) THE DECEDENT'S PROBATE ESTATE;

26 (2) THE DECEDENT'S OWNERSHIP INTEREST IN ACCOUNTS OR  
27 SECURITIES REGISTERED IN PAYABLE ON DEATH (POD), IN TRANSFERABLE ON  
28 DEATH (TOD), IN TRUST FOR (ITF), OR CO-OWNERSHIP WITH RIGHT OF SURVIVORSHIP  
29 FORM, WITH "DECEDENT'S OWNERSHIP INTEREST" MEANING, FOR ACCOUNTS OR  
30 SECURITIES HELD IN TENANCY BY THE ENTIRETY, ONE-HALF THE VALUE OF THE  
31 ACCOUNT OR SECURITY AND, IN ALL OTHER CASES, THAT PORTION OF THE  
32 ACCOUNTS OR SECURITIES TRACEABLE TO THE DECEDENT;

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

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

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

11                           1.        THE DECEDENT POSSESSED THE RIGHT TO, OR IN FACT  
12 ENJOYED THE POSSESSION OR USE OF, THE INCOME OR PRINCIPAL OF THE  
13 PROPERTY; OR

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

17                           (II)        IN THE APPLICATION OF THIS PARAGRAPH, A RIGHT TO  
18 PAYMENTS FROM AN ANNUITY OR UNDER A SIMILAR CONTRACTUAL ARRANGEMENT  
19 SHALL BE TREATED AS A RIGHT TO THAT PORTION OF THE INCOME OF THE  
20 PROPERTY NECESSARY TO EQUAL THE ANNUITY OR OTHER CONTRACTUAL  
21 PAYMENT;

22                           (III)       THE AMOUNT INCLUDED UNDER THIS PARAGRAPH:

23                                   1.        WITH RESPECT TO SUBPARAGRAPH (I) OF THIS  
24 PARAGRAPH, IS THE VALUE OF THE PORTION OF THE PROPERTY TO WHICH THE  
25 DECEDENT'S RIGHT OR ENJOYMENT RELATED, TO THE EXTENT THE PORTION  
26 PASSED TO OR FOR THE BENEFIT OF ANY PERSON OTHER THAN THE DECEDENT'S  
27 PROBATE ESTATE; AND

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

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

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

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

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

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

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

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

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

24                                   1.       ANY PROPERTY THAT PASSED AS A RESULT OF THE  
25 TERMINATION OF A RIGHT OR INTEREST IN, OR POWER OVER, PROPERTY THAT  
26 WOULD HAVE BEEN INCLUDED IN THE ELECTIVE ESTATE UNDER PARAGRAPH (4) OR  
27 (5) OF THIS SECTION IF THE RIGHT, INTEREST, OR POWER HAD NOT TERMINATED  
28 UNTIL THE DECEDENT'S DEATH; OR

29                                   2.       ANY TRANSFER OF PROPERTY TO THE EXTENT NOT  
30 OTHERWISE INCLUDED IN THE ELECTIVE ESTATE, MADE TO OR FOR THE BENEFIT OF  
31 ANY PERSON, EXCEPT:

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

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

40                                   (II)       EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS  
41 PARAGRAPH, FOR PURPOSES OF THIS PARAGRAPH:

1                                   1.       A "TERMINATION" WITH RESPECT TO A RIGHT OR  
2 INTEREST IN PROPERTY OCCURS WHEN THE DECEDENT TRANSFERS OR  
3 RELINQUISHES THE RIGHT OR INTEREST, AND, WITH RESPECT TO A POWER OVER  
4 PROPERTY, OCCURS WHEN THE POWER TERMINATES BY EXERCISE, RELEASE, LAPSE,  
5 DEFAULT, OR OTHERWISE; AND

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

10                               (III)   NOTWITHSTANDING ANYTHING IN SUBPARAGRAPH (II) OF THIS  
11 PARAGRAPH TO THE CONTRARY:

12                               1.       A "TERMINATION" WITH RESPECT TO A RIGHT OR  
13 INTEREST IN PROPERTY DOES NOT OCCUR WHEN THE RIGHT OR INTEREST  
14 TERMINATES BY THE TERMS OF THE GOVERNING INSTRUMENT UNLESS THE  
15 TERMINATION IS DETERMINED BY REFERENCE TO THE DEATH OF THE DECEDENT  
16 AND THE COURT FINDS A PRINCIPAL PURPOSE FOR THE TERMS OF THE INSTRUMENT  
17 RELATING TO THE TERMINATION WAS AVOIDANCE OF THE ELECTIVE SHARE; AND

18                               2.       A DISTRIBUTION FROM A TRUST IS NOT SUBJECT TO THIS  
19 SECTION IF THE DISTRIBUTION IS REQUIRED BY THE TERMS OF THE GOVERNING  
20 INSTRUMENT UNLESS THE EVENT TRIGGERING THE DISTRIBUTION IS DETERMINED  
21 BY REFERENCE TO THE DEATH OF THE DECEDENT AND THE COURT FINDS THAT A  
22 PRINCIPAL PURPOSE OF THE TERMS OF THE GOVERNING INSTRUMENT RELATING TO  
23 THE DISTRIBUTION IS AVOIDANCE OF THE ELECTIVE SHARE; OR

24                               (9)    PROPERTY TRANSFERRED IN SATISFACTION OF THE ELECTIVE  
25 SHARE.

26 3-404.

27       (A)    AN ELECTIVE ESTATE DOES NOT INCLUDE:

28                               (1)    EXCEPT FOR TRANSFERS TO AN ELECTIVE SHARE TRUST, ANY  
29 TRANSFER OF PROPERTY BY THE DECEDENT TO THE EXTENT THE TRANSFER IS  
30 IRREVOCABLE BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION OR AFTER THAT  
31 DATE BUT BEFORE THE DATE OF THE DECEDENT'S MARRIAGE TO THE SURVIVING  
32 SPOUSE;

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

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

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

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

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

8 (B) (1) IF § 3-403(1) OF THIS SUBTITLE AND ANY OTHER PARAGRAPH OF §  
9 3-403 OF THIS SUBTITLE APPLY TO THE SAME PROPERTY INTEREST, THE AMOUNT  
10 INCLUDED IN THE ELECTIVE ESTATE UNDER OTHER PARAGRAPHS IS REDUCED BY  
11 THE AMOUNT INCLUDED UNDER § 3-403(1) OF THIS SUBTITLE.

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

15 3-405.

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

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

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

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

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

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

32 (I) ALL ALLOWABLE CLAIMS, ADMINISTRATION EXPENSES AND  
33 FUNERAL EXPENSES PAID OR PAYABLE FROM THE ELECTIVE ESTATE BUT WITHOUT  
34 A DEDUCTION FOR THE TAX AS DEFINED IN § 7-308(A) OF THE TAX - GENERAL  
35 ARTICLE; AND

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

4 3-406.

5 (A) THE ELECTIVE SHARE IS THE GREATER OF THE MINIMUM ELECTIVE  
 6 SHARE AS DEFINED IN SUBSECTION (B) OF THIS SECTION OR AN AMOUNT EQUAL TO  
 7 A PERCENTAGE OF THE ELECTIVE ESTATE DETERMINED IN ACCORDANCE WITH THE  
 8 FOLLOWING SCHEDULE:

9 IF THE DECEDENT AND THE SPOUSE  
 10 WERE LAST MARRIED TO EACH OTHER: THE PERCENTAGE IS:

11 LESS THAN 5 YEARS 10%

12 AT LEAST 5 YEARS BUT LESS THAN 15  
 13 YEARS 20%

14 AT LEAST 15 YEARS BUT LESS THAN 25  
 15 YEARS 30%

16 25 YEARS OR MORE <Tc>40%

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

19 3-407.

20 (A) UNLESS OTHERWISE PROVIDED IN THE DECEDENT'S WILL OR, IN THE  
 21 ABSENCE OF A PROVISION IN THE DECEDENT'S WILL, IN A TRUST REFERRED TO IN  
 22 THE DECEDENT'S WILL, THE FOLLOWING ARE APPLIED FIRST TO SATISFY THE  
 23 ELECTIVE SHARE:

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

28 (2) TO THE EXTENT PAID TO OR FOR THE BENEFIT OF THE SURVIVING  
 29 SPOUSE, AMOUNTS PAYABLE UNDER ANY PLAN OR ARRANGEMENT DESCRIBED IN §  
 30 3-403(7) OF THIS SUBTITLE;

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

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

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

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

8 (1) CLASS 1 -- THE DECEDENT'S PROBATE ESTATE AND REVOCABLE  
9 TRUSTS;

10 (2) CLASS 2 -- RECIPIENTS OF PROPERTY INTERESTS INCLUDED IN THE  
11 ELECTIVE ESTATE UNDER § 3-403(2), (3), OR (6) OF THIS SUBTITLE AND, TO THE  
12 EXTENT THE DECEDENT HAD AT THE TIME OF DEATH THE POWER TO DESIGNATE  
13 THE RECIPIENT OF THE PROPERTY, PROPERTY INTERESTS INCLUDED UNDER § 3-403  
14 (5) AND (7) OF THIS SUBTITLE; AND

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

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

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

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

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

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

35 (4) PROPERTY SPECIFICALLY OR DEMONSTRATIVELY DEVISED.

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

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

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

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

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

10 3-408.

11 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
12 INDICATED.

13 (2) "CONTRIBUTION PERCENTAGE" MEANS THE REMAINING  
14 UNSATISFIED BALANCE OF THE TRUST OR ESTATE AT THE TIME OF THE  
15 DISTRIBUTION DIVIDED BY THE VALUE OF THE TRUST OR ESTATE AS DETERMINED  
16 UNDER § 3-405 OF THIS SUBTITLE.

17 (3) "REMAINING UNSATISFIED BALANCE" MEANS THE AMOUNT OF  
18 LIABILITY INITIALLY APPORTIONED TO THE TRUST OR ESTATE REDUCED BY  
19 AMOUNTS OR PROPERTY PREVIOUSLY CONTRIBUTED BY ANY PERSON IN  
20 SATISFACTION OF THAT LIABILITY.

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

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

29 (3) TRUST AND PROBATE ESTATE BENEFICIARIES WHO RECEIVE A  
30 DISTRIBUTION OF PRINCIPAL AFTER THE DECEDENT'S DEATH ARE LIABLE IN AN  
31 AMOUNT EQUAL TO THE VALUE OF THE PRINCIPAL DISTRIBUTED TO THEM  
32 MULTIPLIED BY THE CONTRIBUTION PERCENTAGE OF THE DISTRIBUTING TRUST OR  
33 ESTATE.

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

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

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

5 1. CONTRIBUTE ALL OF THE PROPERTY; OR

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

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

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

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

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

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

30 3-409.

31 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
32 INDICATED.

33 (2) "APPLICABLE VALUATION DATE" MEANS:

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (2) IF THE SURVIVING SPOUSE HAS A LIFE INTEREST IN PROPERTY NOT  
38 IN TRUST THAT ENTITLES THE SPOUSE TO THE USE OF THE PROPERTY FOR LIFE, THE

1 VALUE OF THE SPOUSE'S INTEREST IS ONE-HALF OF THE VALUE OF THE PROPERTY  
2 ON THE APPLICABLE VALUATION DATE.

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

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

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

12 (III) 50% IN ALL OTHER CASES.

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

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

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

30 3-410.

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

34 3-411.

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

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

3 3-412.

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

5 (1) BY THE SURVIVING SPOUSE; OR

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

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

11 3-413.

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

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

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

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

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

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

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

34 3-414.

35 (A) (1) THE COURT SHALL DETERMINE THE ELECTIVE SHARE AND SHALL  
36 ORDER CONTRIBUTION.

1           (2)     A FINAL ORDER OF CONTRIBUTION IS ENFORCEABLE IN  
2 PROCEEDINGS IN ANY COURT OF GENERAL JURISDICTION.

3     (B)     (1)     THE SURVIVING SPOUSE, AN ATTORNEY IN FACT OR GUARDIAN OF  
4 THE PROPERTY OF THE SURVIVING SPOUSE UNDER § 3-412 OF THIS SUBTITLE, OR  
5 THE PERSONAL REPRESENTATIVE OF A SURVIVING SPOUSE WHO DIES FOLLOWING A  
6 VALID ELECTION UNDER THIS SUBTITLE SHALL COLLECT THE ELECTIVE SHARE AS  
7 PROVIDED IN THE ORDER OF CONTRIBUTION.

8           (2)     IF THE SURVIVING SPOUSE OR REPRESENTATIVE OF THE SURVIVING  
9 SPOUSE BRINGS AN ACTION TO ENFORCE AN ORDER OF CONTRIBUTION, THE  
10 JUDGMENT SHALL INCLUDE THE SURVIVING SPOUSE'S COSTS, REASONABLE  
11 ATTORNEY'S FEES, AND REASONABLE INTEREST AS DETERMINED BY THE COURT.

12     SECTION 2. AND BE IT FURTHER ENACTED, That this Act applies to all  
13 decedents who die on or after October 1, 2000. The law in effect on September 30,  
14 2000, applies to all decedents who die before October 1, 2000.

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

18     SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 October 1, 2000.