

HB0281/786981/1

BY: Health and Government Operations Committee

AMENDMENTS TO HOUSE BILL 281
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 9, after “decedent;” insert “requiring that the share of a surviving spouse who makes the election be paid from the decedent’s estate and each revocable trust of the decedent in a certain manner; altering the time within which an election by a surviving spouse must be made under certain circumstances; requiring that notice of an election be provided to the trustee of each revocable trust of the decedent;”; in line 15, after “decedent;” insert “specifying the manner in which the portion of an elective share that is payable from a revocable trust of a decedent is to be paid; requiring the removal of a surviving spouse serving as a trustee or an advisor to the trustee of a certain trust under certain circumstances; prohibiting, under certain circumstances, a surviving spouse from serving in certain capacities or exercising certain powers with respect to a certain trust;”; in line 20, after “3-203,” insert “3-205, 3-206,”; and after line 22, insert:

“BY adding to

Article - Estates and Trusts

Section 14.5-604

Annotated Code of Maryland

(2011 Replacement Volume and 2014 Supplement)”.

AMENDMENT NO. 2

On page 2, in line 17, after “REVOCABLE” insert “**BY THE DECEDENT**”; after line 27, insert:

“(D) THE SHARE OF A SURVIVING SPOUSE WHO MAKES THIS ELECTION SHALL BE PAID FROM THE DECEDENT’S ESTATE AND EACH REVOCABLE TRUST OF

(Over)

THE DECEDENT IN THE SAME PROPORTION THAT THE VALUE OF THE ESTATE OR REVOCABLE TRUST BEARS TO THE VALUE OF THE NET ESTATE.”;

and in lines 28 and 30, strike “(d)” and “(e)”, respectively, and substitute “**(E)**” and “**(F)**”, respectively.

AMENDMENT NO. 3

On page 3, after line 3, insert:

“3–205.

(A) The right of election of a surviving spouse may be waived before or after marriage by a written contract, agreement, or waiver signed by the party waiving the right of election.

(B) Unless it provides to the contrary, a waiver of “all rights” in the property or estate of a present or prospective spouse, or a complete property settlement entered into after or in anticipation of separation or divorce, is [a]:

(1) A waiver of any right to [his] A family allowance as well as to [his] THE elective share by each spouse in the property of the spouse[, his] AND THE right to letters under § 5–104 of this article[, and is an]; AND

(2) AN irrevocable renunciation of any benefit which would pass to [him] THE SPOUSE from the other by intestate succession, by statutory share, or by virtue of the provisions of a will OR REVOCABLE TRUST executed before the waiver or property settlement.

3–206.

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

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

(ii) Six months after **THE EARLIER OF:**

1. [the] **THE** first appointment of a personal representative under a will; OR

2. **DELIVERY BY THE TRUSTEE OF EACH REVOCABLE TRUST OF THE DECEDENT TO THE SURVIVING SPOUSE OF:**

A. **A NOTICE DISCLOSING THE EXISTENCE OF THE TRUST;**

B. **A COPY OF THE TRUST INSTRUMENT; AND**

C. **A STATEMENT OF THE NATURE AND VALUE OF THE TRUST'S ASSETS.**

(2) (i) Within the period for making an election, the surviving spouse may file with the court a petition for an extension of time, with a copy given to the personal representative **AND THE TRUSTEE OF EACH REVOCABLE TRUST OF THE DECEDENT.**

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

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

(Over)

AMENDMENT NO. 4

On page 3, after line 15, insert:

“(C) NOTICE OF AN ELECTION TO TAKE AN ELECTIVE SHARE OF AN ESTATE OF A DECEDENT SHALL BE DELIVERED TO THE TRUSTEE OF EACH REVOCABLE TRUST OF THE DECEDENT.”

AMENDMENT NO. 5

On page 3, in line 26, strike “(1)”; in the same line, strike “contribution” and substitute **“THE PORTION OF THE ELECTIVE SHARE THAT IS PAYABLE FROM THE DECEDENT’S PROBATE ESTATE SHALL BE PAID AS FOLLOWS:**

(1) CONTRIBUTION;

in line 27, strike “of it”; in the same line, strike the period and substitute “;”; in line 29, strike “OR TRUSTEE”; in line 32, strike the period and substitute “; **AND**”; and in line 33, strike “OR TRUST INSTRUMENT”.

On page 4, in line 3, strike “OR SETTLOR”; after line 3, insert:

“(C) IF THERE IS AN ELECTION TO TAKE AN ELECTIVE SHARE, THE PORTION OF THE ELECTIVE SHARE THAT IS PAYABLE FROM A REVOCABLE TRUST OF THE DECEDENT SHALL BE:

(1) PAID IN A MANNER THAT THE TRUSTEE OF THE REVOCABLE TRUST OF THE DECEDENT CONSIDERS TO BE IN ACCORDANCE WITH THE TERMS AND PURPOSES OF THE TRUST AND INTERESTS OF THE BENEFICIARIES, PROVIDED THAT THE PAYMENT MAY NOT BE UNREASONABLY DELAYED; AND

(2) MADE IN CASH OR OTHER PROPERTY ACCEPTABLE TO THE SURVIVING SPOUSE IN AN AMOUNT EQUAL TO THE FAIR MARKET VALUE OF THE SURVIVING SPOUSE'S INTEREST IN THE REVOCABLE TRUST OF THE DECEDENT.

14.5-604.

(A) THIS SECTION APPLIES UNLESS OTHERWISE EXPRESSLY PROVIDED:

(1) IN THE TRUST INSTRUMENT;

(2) BY COURT ORDER; OR

(3) BY A WRITTEN AGREEMENT BETWEEN THE SETTLOR AND THE SURVIVING SPOUSE OF THE SETTLOR.

(B) ON THE FILING OF AN ELECTION BY A SURVIVING SPOUSE TO TAKE AN ELECTIVE SHARE UNDER § 3-207 OF THIS ARTICLE THAT APPLIES TO A REVOCABLE TRUST OF A SETTLOR THAT BECAME IRREVOCABLE BY REASON OF THE DEATH OR INCAPACITY OF THE SETTLOR:

(1) IF THE SURVIVING SPOUSE IS SERVING AS A TRUSTEE OR AN ADVISOR TO THE TRUSTEE OF THE TRUST, THE SURVIVING SPOUSE SHALL BE REMOVED AS A TRUSTEE OR AN ADVISOR ON THE DATE OF THE FILING OF THE ELECTION WITHOUT FURTHER COURT ACTION; AND

(2) AFTER THE ELECTION BECOMES FINAL, THE SURVIVING SPOUSE MAY NOT:

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

(II) EXERCISE A TRUST OR FIDUCIARY POWERS PROVIDED IN THE TERMS OF THE TRUST, INCLUDING A POWER OF APPOINTMENT.

AMENDMENT NO. 6

On page 4, in line 6, after “Act” insert “or any revocable trust of a decedent that became irrevocable by reason of the death or incapacity of the settlor before the effective date of this Act”.