Article - Estates and Trusts

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§3–410.

(a) This section does not apply if payment of the elective share of a surviving spouse is otherwise provided for in:

(1) (i) The decedent's will; or

(ii) The instrument governing any trust of which the decedent was the settlor; or

(2) A written agreement between the persons responsible for paying the elective share that is approved by the court.

(b) (1) Subject to paragraph (2) of this subsection, the elective share of a surviving spouse shall be paid:

(i) From the portion of the decedent's probate estate that is included in the estate subject to election and does not constitute any part of the spousal benefits;

(ii) To the extent the elective share is not fully paid as provided in item (i) of this paragraph:

1. From the portion of any revocable trust of the decedent that is included in the estate subject to election and does not constitute any part of the spousal benefits; and

2. If there is more than one revocable trust of the decedent that is included in the estate subject to election, by apportionment among the trusts in proportion to the value of the assets of each revocable trust that are available to satisfy the elective share; and

(iii) To the extent the elective share is not fully paid as provided in items (i) and (ii) of this paragraph, by the recipients of any other portions of the estate subject to election that do not constitute any part of the spousal benefits, prorated among the recipients in proportion to the value of the assets received by each recipient.

(2) If any payment required by this subsection is preempted by federal law or is to be made from either a trust established under § 1917(c)(2)(B)(iii),

(c)(2)(B)(iv), (d)(4)(A), or (d)(4)(C) of the Social Security Act, an account established under § 529A of the Internal Revenue Code, or a special needs trust for the benefit of an individual who is disabled as defined in § 1614(a)(3) of the Social Security Act, the portion of the elective share payable under this subsection shall be apportioned among those recipients whose benefits are not preempted under federal law or who are not beneficiaries of those trusts or accounts.

(c) Unless the surviving spouse and the payor agree otherwise in writing, each person required to pay a portion of the elective share under this section shall make payment:

(1) In a manner that is deemed to be in accordance with the terms and purposes of any instrument governing the disposition of the portion of the estate subject to election from which the portion of the elective share is to be paid; and

(2) (i) In cash;

(ii) With a prorated share of each item of property from which that portion of the elective share can be paid; or

(iii) With other property acceptable to the surviving spouse, in an amount equal to the fair market value of that portion of the elective share to be paid by the payor.

(d) A payor or any other third party, other than the personal representative of the decedent, the trustee of any revocable trust of the decedent, or the person responsible for filing the estate tax return, is not liable for having made a payment or transferred an item of property, or any other benefit from which the elective share might be paid, to a beneficiary designated in a governing instrument or beneficiary designation if the payment or transfer is made:

(1) In good faith reliance on the validity of the governing instrument or beneficiary designation on request and satisfactory proof of the death of the decedent; and

(2) Before the payor or other third party receives written notice of the election by the surviving spouse to receive the elective share under this subtitle.

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