

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

ALABAMA

| Property Regime | Elective Share Type | Elective Share Statute Location |
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| Common Law | Probate-Only | Title 43, Chapter 8, Article 4, Section 70-76 |
| Intestacy – Spouse’s Share: | | 100% if decedent has no surviving issue or parent; \$100,000 plus 1/2 of the balance if decedent has surviving parent but no surviving issue; \$50,000 plus 1/2 of the balance if all decedent’s surviving issue are issue of the spouse; 1/2 of estate if decedent has surviving issue, one or more of whom are not issue of the spouse [§43-8-41(1) through (4)]. If decedent has property outside Alabama, spouse’s share limited in the aggregate to foregoing amounts [§43-8-41(5)]. |
| Allowance(s) / Exemption(s): | | Spouse of domiciliary decedent is entitled to a homestead allowance of \$15,000 [§43-8-110], exempt personal property allowance up to \$7,500 [§43-8-111], and family allowance for maintenance during the period of administration, or, if estate is insolvent, for up to one year [§43-8-112]. Homestead, exempt property, and family allowances are allowed without regard to elective share [§43-8-74]. |
| Elective Share Rights: | | Spouse of domiciliary decedent has an elective share right to take the lesser of (a) decedent’s estate less spouse’s separate estate, or (b) 1/3 of decedent’s estate [§43-8-70(a)]. |
| Property Subject to Elective Share: | | Statute suggests that spouse’s elective share is satisfied from decedent’s probate estate only [§43-8-70(a)]. “Spouse’s separate estate” consists of: (1) all property owned outright after death of decedent; (2) all interests in property acquired as the result of decedent’s death; and, (3) all income and beneficial interests (a) under a trust, (b) in proceeds of insurance on the life of decedent, and (c) any pension, deferred compensation, disability, death benefit, or other such plan established by decedent’s employer [§43-8-70(b)(1-3)]. |
| Satisfaction of Elective Share: | | For elective share purposes, values included in the estate which pass or have passed to spouse, or which would have passed to spouse but were renounced, are applied first to satisfy the elective share and to reduce any contributions due from other recipients of transfers included in the estate [§43-8-75(a)]. Spouse’s beneficial interest in any life estate or in any trust is deemed to be 1/2 of the total value of the life estate or trust property, unless higher or lower values are established by proof [§43-8-75(a)]. To the extent that spouse’s beneficial interest in a life estate or trust is coupled with a general power of appointment, the beneficial interest is 2/3 of the total life estate or trust property [§43-8-75(a)]. Remaining property of decedent’s estate is so applied that liability for the elective share balance is equitably apportioned among the other recipients of the estate in proportion to the value of their interests [§43-8-75(b)]. |
| Deadline for Election: | | Petition must be filed within six months after the date of decedent’s death, or within six months after probate of decedent’s will, whichever occurs later; deadline can be extended for cause if request made before deadline [§43-8-73(a)]. |
| Election Procedure / Who Can File?: | | Petition for elective share must be filed with the court and mailed or delivered to the personal representative, if any [§43-8-73(a)]; spouse must give notice of time and place for hearing to adversely-affected interested persons [§43-8-73(b)]. Right of election may be exercised during spouse’s lifetime by spouse, personally, or by spouse’s guardian, custodian, curator, or conservator by order of the court upon fiduciary’s petition or upon court’s initiative, after finding that exercise is necessary to provide adequate support during probable life expectancy of spouse [§43-8-71]. |
| Spouse’s Right vs. Non-Domiciliary Property | | Statutory inference that right of election applies only to probate estate [see §43-8-1 and §43-8-70(a) and (c)]. |
| Spouse’s Right vs. Situs Property of Non-Domiciliary Decedent: | | The right of a non-domiciliary decedent’s surviving spouse to take an elective share of property in Alabama is governed by the law of decedent’s domicile at death [§43-8-70(c)]. |
| Waiver / Preclusion of Spouse’s Rights: | | Rights of/to elective share, homestead allowance, exempt property, and/or family allowance may be waived, wholly or partially, before or after marriage, may be waived by a written contract, agreement, or signed waiver. Waiver of “all rights” (or equivalent language) applies to all of the foregoing, intestate share, and benefits under will signed before waiver, absent contrary provision in waiver instrument [§43-8-70(c)]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

ALASKA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|---|------------------------|--|
| Common Law / Opt-in Community Property | Augmented Estate – UPC | Title 13, Chapter 12, Article 2, Section 201-214 |

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| Intestacy - Spouse's Share: | Entire estate if (a) decedent has no surviving descendants or parents, or (b) all decedent's surviving descendants are descendants of spouse; \$200,000 plus 3/4 of the balance if decedent has surviving parent(s) but no surviving descendant; \$150,000 plus 1/2 of the balance if all decedent's surviving descendants are descendants of spouse, but spouse has separate descendant(s); \$100,000 plus 1/2 of the balance if one or more of decedent's surviving descendants are not descendants of spouse [§13.12.102(1) through (4)]. |
| Allowance(s) / Exemption(s): | Spouse of domiciliary decedent is entitled to a homestead allowance of \$27,000 [§13.12.402], exempt property allowance up to \$10,000 [§13.12.403], and family allowance for maintenance during administration, or, if estate is insolvent, then for up to one year [§13.12.404]. Homestead, exempt property, and family allowances are allowed without regard to elective share [§13.12.202(c)]. |
| Elective Share Rights: | Spouse of domiciliary decedent has right to take an elective share amount equal to (a) 1/3 of decedent's augmented estate, or (b) if total amount of spouse's property and non-probate transfers to others, decedent's non-probate transfers to spouse, and elective share payable from decedent's probate/non-probate transfers to others is less than \$50,000, spouse entitled to supplemental elective share amount equal to the difference between the sum aforesaid and \$50,000 [§13.12.202(b)]. |
| Property Subject to Elective Share: | Augmented estate includes: the sum of the values of all property, real or personal, movable or immovable, tangible or intangible, wherever situated, that constitute decedent's "net probate estate," decedent's non-probate transfers to others, decedent's non-probate transfers to spouse, and spouse's property and non-probate transfers to others [§13.12.203]. Decedent's "net probate estate" is the probate estate reduced by funeral and administration expenses, homestead allowance, family allowances, exempt property, and enforceable claims [§13.12.204]. |
| Satisfaction of Elective Share: | The following are applied first to satisfy the elective share amount and to reduce/eliminate contributions from decedent's probate estate and non-probate transfers to others: (a) amounts included in the augmented estate under §13.12.204 passing to spouse by testate or intestate succession, and amounts included in the augmented estate under §13.12.206; and, (b) amounts included in the augmented estate under §13.12.207, up to 2/3 of the augmented estate [§13.12.209(a)]. If the foregoing is insufficient, or if spouse is entitled to a supplemental elective share amount, amounts included in decedent's probate estate and in decedent's non-probate transfers to others, <i>other than amounts included under §13.12.205(a)(3)(A) or (C)</i> , are applied first to satisfy the balance or the supplemental elective, and liability is equitably apportioned among recipients of probate and non-probate transfers [§13.12.209(b)]. If the foregoing is insufficient, balance is paid from remaining portion of decedent's non-probate transfers, and equitably apportioned among the recipients [§13.12.209]. |
| Deadline for Election: | Must petition for elective share within (a) nine months after the date of decedent's death, or (b) within six months after probate of decedent's will, whichever occurs later; deadline can be extended upon petition filed within nine months of decedent's death [§13.12.211(a) and (b)]. |
| Election Procedure / Who Can File?: | Petition for elective share must be filed in the court and mailed or delivered to the personal representative, if any [§13.12.211(a)]. Election must be filed during spouse's lifetime by spouse, personally, or by spouse's conservator, guardian, or attorney-in-fact [§13.12.212(a)]. If election is exercised on behalf of incapacitated spouse, elective share is set aside in trust for the spouse's benefit [§13.12.212(b)]. |
| Spouse's Right vs. Non-Domiciliary Property | Included in the augmented estate under §13.12.203. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | The right, if any, of a non-domiciliary decedent's spouse to take an elective share of property in Alaska is governed by the law of decedent's domicile at death [§13.12.202(d)]. |
| Waiver / Preclusion of Spouse's Rights: | Spouse's rights of/to election, homestead allowance, exempt property, and/or family allowance may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or signed waiver. Waiver of "all rights" (or equivalent language) applies to all of the foregoing, intestate share, and benefits under will signed before waiver, absent contrary provision in waiver instrument [§12.12.213]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

ARIZONA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|--------------------|---------------------|---------------------------------|
| Community Property | N/A | |

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| Intestacy - Spouse's Share: | All of decedent's separate property and decedent's 1/2 of community property if (a) decedent has no surviving issue or (b) all decedent's surviving issue are issue of spouse; 1/2 of decedent's separate property and none of decedent's community property if decedent has surviving issue, one or more of whom are not issue of the spouse [§14-2102.1 through 2]. |
| Allowance(s) / Exemption(s): | Spouse is entitled to a homestead allowance of \$18,000 [§14-2402], an exempt property allowance up to \$7,000 [§14-2403], and a family allowance for maintenance during the period of administration, or, for up to one year if the estate is insolvent [§14-2404], all of which are payable from decedent's separate property and share of community property [§14-3101.A]. |
| Elective Share Rights: | N/A |
| Property Subject to Elective Share: | N/A |
| Satisfaction of Elective Share: | N/A |
| Deadline for Election: | N/A |
| Election Procedure / Who Can File?: | N/A |
| Spouse's Right vs. Non-Domiciliary Property | No quasi-community property provision. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | No statutory provision. |
| Waiver / Preclusion of Spouse's Rights: | Spouse may waive rights to homestead allowance, exempt property, and family allowance, wholly or partially, before or after marriage by a signed contract, agreement, or waiver [§14-2207.A]. Waiver of "all rights" (or equivalent language) applies to all of the foregoing, intestate share, and benefits under will signed before waiver, absent contrary provision in waiver instrument [§14-22207.D]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

ARKANSAS

| Property Regime | Elective Share Type | Elective Share Statute Location |
|---|--|--|
| Common Law | Probate-Only | Title 28, Sub. 4, Ch. 39, Subchapter 4, Sections 401-407 |
| Intestacy - Spouse's Share: | None if decedent survived by children or descendants; if decedent has no surviving children/descendants, then (a) entire estate if the marriage was at least three years in duration or (b) 1/2 of the estate if the marriage was shorter than three years in duration [§28-9-214(1) and (2)]. | |
| Allowance(s) / Exemption(s): | Spouse entitled to homestead rights [§28-39-101 - 104] and statutory allowance [§28-39-201] without regard to dower and curtesy [28-39-401(b)]. In addition to the foregoing, and in addition to dower and curtesy, spouse receives any undistributed residue if no descendants of decedent's ancestors survive [§28-39-401(b)(3)]. | |
| Elective Share Rights: | <p>Spouse can elect to take against decedent's will if spouse was married to decedent for at least one year. Spouse's election confers dower or curtesy rights in decedent's property.</p> <p>Dower & Curtesy and No Children. Spouse receives fee simple of 1/2 of the real estate and personal estate [§28-11-307].</p> <p>Dower & Curtesy and Children. Real property: spouse endowed of the third part of all the lands for life [§28-11-301]. Personalty: spouse entitled to one-third (1/3) of decedent's personal property [§28-11-305].</p> | |
| Property Subject to Elective Share: | <p>Decedent's real property and personal property are subject to spouse's right of election. Electing spouse receives dower or curtesy rights in decedent's property. See A.C.A. Title 28, Subtitle 2, Chapter 11 for dower and curtesy provisions.</p> <p>N.B. In <i>In re Estate of H. Ripley Thompson v. Thompson</i>, 434 S.W.3d 877 (2014), the Supreme Court of Arkansas held that a decedent spouse's revocable trust assets are included in the estate for elective share calculation purposes where transfers to the trust were intended to defeat the surviving spouse's marital rights.</p> | |
| Satisfaction of Elective Share: | Electing spouse receives dower or curtesy rights in decedent's real and personal property. See A.C.A. Title 28, Subtitle 2, Chapter 11 for dower and curtesy provisions. | |
| Deadline for Election: | Must elect within one month after the expiration of the time limited for the filing of claims [§28-39-403], which is six months after publication of notice [§28-50-101(a)]. If litigation is pending regarding the validity or construction of decedent's will, or regarding any matter that affects spouse's share, the deadline is extended until one month after the matter is finally adjudicated [§28-39-403]. | |
| Election Procedure / Who Can File?: | <p>Spouse must sign and acknowledge the election form provided under §28-39-404(a)(2); form must be filed with probate court of the circuit court [§28-39-404(a)(1)(B)].</p> <p>Right of election is personal to spouse and exercisable only during spouse's lifetime; guardian of incompetent spouse may file election with court approval [§28-39-405(a) and (b)].</p> | |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision. But see <i>Apperson v. Bolton</i> , 29 Ark. 418 (1874), "The alienation, transmission and descent of real estate is governed by the laws of the country or state in which it is situated. This rule is general, and there is no diversity of opinion about it. So, the general rule is, that the right of dower in real estate is governed by the <i>locus rei sitae</i> . The widow has dower, not by the law of the place of the marriage nor of the domicile, but according to the law of the place where the particular lands are situated." | |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | No statutory provision; but see <i>Apperson v. Bolton</i> , 29 Ark. 418 (1874). | |
| Waiver / Preclusion of Spouse's Rights: | Parties to premarital agreement may contract with respect to property rights, disposition of property (including life insurance) upon death, making of a will, trust, or other arrangement to carry out provisions of agreement [§9-11-403]. | |
| Miscellaneous: | Arkansas retains dower and curtesy [see Title 28, Subtitle 2, Chapter 11 of Arkansas Code]. | |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

CALIFORNIA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|--------------------|---------------------|---------------------------------|
| Community Property | N/A | |

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| Intestacy - Spouse's Share: | <p>Community Property & Quasi-Community Property: Spouse receives decedent's 1/2 of community property and quasi-community property [Prob. Code §6401(a) and (b)].</p> <p>Decedent's Separate Property: Spouse receives: (1) all of decedent's separate property if decedent has no surviving issue, parent, sibling, or issue of sibling; (2) 1/2 of decedent's separate property if decedent has (a) one child or issue of one child surviving, or (b) no surviving child or issue but surviving parent or issue of parent; (3) 1/3 if decedent has (a) more than one child surviving, (b) one child and issue of deceased child surviving, or (c) issue of two or more deceased children surviving [Prob. Code §6401(a) through (c)].</p> |
| Allowance(s) / Exemption(s): | Until the inventory is filed and for a period of 60 days thereafter, spouse can remain in possession of the family dwelling and certain personal property [Prob. Code §6500]. In addition, spouse is entitled to exempt property (other than the family dwelling) [Prob. Code §6510], a probate homestead allowance [Prob. Code §§6520-6521], and a reasonable family allowance during administration [Prob. Code §6540]. |
| Elective Share Rights: | <p>N/A</p> <p>"Quasi-community property" is all personal property regardless of situs, and all real property in California that would have been community property had decedent and spouse had been domiciled in California at the time such property was acquired (whether by purchase or exchange) [Prob. Code §66].</p> |
| Property Subject to Elective Share: | <p>N/A</p> <p>Quasi-community property: At death of domiciliary decedent, 1/2 of decedent's quasi-community property belongs to spouse [Prob. Code §101(a)] and may be recaptured from the transferee [Prob. Code §102]. <i>Does not apply if California is the ancillary jurisdiction of a decedent domiciled in a common law property jurisdiction; see Prob. Code §120, below.</i></p> |
| Satisfaction of Elective Share: | N/A |
| Deadline for Election: | N/A |
| Election Procedure / Who Can File?: | N/A |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision. However, real property situated in a common law jurisdiction but acquired with community funds remains community property (see, e.g., <i>Tischhauser v. Tischhauser</i> , 298 P. 2d 551 (1956)). Law of situs jurisdiction to the contrary may apply under <i>lex loci rei sitae</i> doctrine. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | California real property of non-domiciliary decedent which is not community property is subject to the elective share regime of decedent's domicile, as though the California property were located in decedent's domicile [Prob. Code §120]. |
| Waiver / Preclusion of Spouse's Rights: | Waiver, before or during marriage [Prob. Code §140], of any one or more of the following rights, <i>inter alia</i> , is permissible: intestate share; benefit under will signed before waiver; probate homestead; exempt property set-aside; family allowance; election against community or quasi-community property; statutory share of omitted spouse; appointment as personal representative; interest in non-probate property [Prob. Code §141]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

COLORADO

| Property Regime | Elective Share Type | Elective Share Statute Location |
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| Common Law | Augmented Estate – UPC | Title 15, Col. Prob. Code, Art. 11, Pt. 2, Sects. 201-214 |
| Intestacy - Spouse's Share: | Entire estate if decedent has (a) no surviving descendant or parent, or (b) surviving descendants, all of whom are descendants of spouse and spouse has no separate descendants; \$300,000 plus 3/4 of the balance if decedent has surviving parent(s) but no surviving descendant; \$225,000 plus 1/2 of the balance if decedent has surviving descendants all of whom are descendants of the spouse, and spouse has one or more separate surviving descendants; \$150,000 plus 1/2 of the balance if decedent has one or more surviving descendants who are not descendants of the spouse [§15-11-102(1) through (4)]. The foregoing dollar amounts are to be adjusted for cost of living as determined under §15-10-112 [§15-11-102(6)]. | |
| Allowance(s) / Exemption(s): | Spouse is entitled to the homestead exemption (but not an allowance) [§38-41-204], exempt property of \$30,000 in excess of any security interests therein [§38-41-403], and a reasonable allowance for maintenance during the period of administration, or for up to one year if the estate is insolvent [§38-41-404(1)]. Exempt property and family allowance is provided without regard to elective share [§38-41-403(1) and §38-41-404(2), respectively] | |
| Elective Share Rights: | Spouse of domiciliary decedent has right to take an elective share amount equal (a) to 50% of the "marital-property portion" of the augmented estate; or, (b) if the total amount of spouse's property and non-probate transfers to others, decedent's non-probate transfer to spouse, and elective share payable from decedent's probate/non-probate transfers to others is less than \$50,000, spouse entitled to supplemental elective share amount equal to the difference between the sum aforesaid and \$50,000 [§15-11-202(1) and (2)]. The "marital-property portion" is determined by multiplying the augmented estate by applicable percentage in the marriage duration vesting schedule [§15-11-203(1) and (2)]. | |
| Property Subject to Elective Share: | Augmented estate includes: decedent's net probate estate, decedent's non-probate transfers to others, decedent's non-probate transfers to spouse, and spouse's property and non-probate transfers to others, net of administration expenses and funeral costs [§§15-11-203 through 208]. "Marital-property portion" of the augmented estate ranges from 10% to 100% of the augmented estate pursuant to vesting schedule in §15-11-203(2), and the elective share is 50% of the marital-property portion [§15-11-203]. | |
| Satisfaction of Elective Share: | The following are applied first to satisfy the elective share amount and to reduce/eliminate contributions from decedent's probate estate and non-probate transfers to others: (a) amounts included in the augmented estate under §15-11-204 (net probate estate) passing to spouse by testate or intestate succession, and the "marital-property portion" of spouse's separate property included in the augmented estate under §15-11-207 (excluding property or interests that spouse disclaimed) [§15-11-209(1)]. If the foregoing is insufficient, or if spouse is entitled to a supplemental elective share amount, amounts included in decedent's probate and non-probate transfers to others (made within two years of death) are applied first to satisfy the balance or the supplemental elective, and liability is apportioned among recipients of such probate and non-probate transfers proportionally [§15-11-209(3)(a)]. If the foregoing is insufficient, balance is paid from remaining portion of decedent's non-probate transfers to others, and apportioned among the recipients proportionally [§15-11-209(3)(b)]. | |
| Deadline for Election: | Petition for elective share must be filed within nine months after the date of decedent's death, or within six months after probate of decedent's will, whichever occurs later [§15-11-211(1)]. Within nine months after decedent's death, spouse may petition the court for an extension of time [§15-11-211(2)]. | |
| Election Procedure / Who Can File?: | Petition for elective share must be filed in the court and mailed or delivered to the personal representative, if any [§15-11-211(1)]. Election must be filed during spouse's lifetime by spouse, personally, or by spouse's conservator, guardian, or attorney-in-fact [§15-11-212(1)]. If election is exercised on behalf of incapacitated spouse, elective share is set aside in trust for spouse's benefit [§15-11-212(2)]. | |
| Spouse's Right vs. Non-Domiciliary Property | Included in the augmented estate under §15-11-203. | |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | The right of a non-domiciliary decedent's spouse to take an elective-share of property in Colorado is governed by the law of decedent's domicile [§15-11-202(4)]. | |

SURVIVING SPOUSE’S RIGHTS TO SHARE IN DECEASED SPOUSE’S ESTATE

COLORADO, continued

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| Waiver / Preclusion of Spouse’s Rights: | Waiver of right to elective share, or of any other marital right or obligation, or any affirmation or modification thereof, made on or after July 1, 2014 is unenforceable unless contained in a premarital or marital agreement as defined in §14-2-302; any waiver, affirmation, or modification made before that date is governed by the law in effect at that time [§15-11-213(1) and (2)]. |
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SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

CONNECTICUT

| Property Regime | Elective Share Type | Elective Share Statute Location |
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| Common Law | Probate-Only | Title 45a, Chapter 802b, Part IX, Section 436 |
| Intestacy - Spouse's Share: | Entire estate if no surviving issue or parent of decedent; \$100,000 plus 3/4 of the balance if no issue but parent(s) living; \$100,000 plus 1/2 of the balance if surviving issue are common; 1/2 of estate if decedent has one or more separate issue surviving [§45a-437(a)(1) through (4)]. | |
| Allowance(s) / Exemption(s): | Spouse entitled to support allowance at court's discretion [§45a-320], right to occupy homestead during administration until disposition [§45a-321], and certain exempt personal property. | |
| Elective Share Rights: | Spouse may elect to take a "statutory share" of real and personal property passing under decedent's will; the "statutory share" means a life estate of 1/3 in value of all property passing under decedent's will remaining after payment of debts and charges against the estate [§45a-436(a)]; provided, however, that statutory share cannot be taken until expiration of the allowance [§45a-436(d)]. | |
| Property Subject to Elective Share: | The "statutory share" applies only to property of decedent's probate estate [§45a-436]. Decedent's bequest of property to spouse is taken in lieu of statutory share unless decedent's will expresses contrary intention [§45a-436]. Decedent's revocable trust property is not subject to spouse's statutory share claim [<i>Bezzini v. Department of Soc. Servs.</i> , 715 A.2d 791, 796 (1998), citing <i>Cherniak v. Home National Bank & Trust Co.</i> , 198 A.2d 58 (1964)]. | |
| Satisfaction of Elective Share: | "Statutory share" is set out by the fiduciary administering decedent's estate or, in the discretion of the probate court or on application by any interested person, by distributors appointed by the probate court. "Statutory share" may consist of personal property or real property, or both, according to the judgment of the fiduciary or distributors [§45a-436(e)]. | |
| Deadline for Election: | Written notice of intention to take "statutory share" must be filed within 150 days after mailing of the decree admitting the will to probate [§45a-436(c)]. | |
| Election Procedure / Who Can File?: | Written notice of intention to take "statutory share" must be filed with the Probate Court before which estate is being administered [§45a-436(c)]. Notice of intention may be filed by spouse, personally, or by spouse's conservator or guardian with approval of court that appointed the conservator / guardian [§45a-436(c)]. | |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision. | |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | No statutory provision. | |
| Waiver / Preclusion of Spouse's Rights: | Spouse's right to "statutory share" may be waived by written contract made before or after marriage [§45a-436(f)]; parties may contract in premarital agreement with respect to <i>inter alia</i> rights in property of the other, disposition of property upon death, making of a will, trust or other arrangement to carry out provisions of agreement [§46b-36d(a)]. | |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

DELAWARE

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|--|
| Common Law | Semi-Augmented | Title 12, Part III, Chapter 9, Section 901-908 |

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| Intestacy - Spouse's Share: | Entire estate if decedent has no surviving issue or parent; first \$50,000 of personal estate plus 1/2 of the balance of personal estate and a life estate in real property if decedent has either (a) no surviving issue but has surviving parent(s), or (b) surviving issue, all of whom are issue of the spouse; 1/2 personal estate and a life estate in real estate if decedent has surviving issue, one or more of whom are not issue of spouse [§502]. |
| Allowance(s) / Exemption(s): | Spouse entitled to allowance up to \$7,500 [§2308] without regard to elective share [§907]. |
| Elective Share Rights: | Spouse of domiciliary decedent has right of election to take an elective share amount equal to 1/3 of the "elective estate," less the amount of all transfers from decedent to spouse [§901]. |
| Property Subject to Elective Share: | Decedent's "elective estate" is the gross estate for federal estate tax purposes after deduction for debts, administration expenses, and taxes, including one-half (1/2) property jointly owned by decedent and spouse with right of survivorship [§902]. |
| Satisfaction of Elective Share: | Elective share may be satisfied in cash or in kind, or partly in each [§901(a)]. Liability for elective share is apportioned among recipients of "decedent's contributing estate" <i>pro rata</i> [§908(a)]. "Decedent's contributing estate" is any portion of the elective estate the decedent owned solely, and which was not transferred or deemed transferred to spouse under § 903(1); any jointly owned property with the right of survivorship of which the decedent was a joint owner, any insurance proceeds which are payable to a beneficiary other than to the estate, or any property held in trust are excluded [§908(b)]. |
| Deadline for Election: | Petition for elective share must be filed within six months after the grant of letters testamentary or of administration; can be extended for good cause upon request filed before deadline [§906(a)]. |
| Election Procedure / Who Can File?: | Petition must be filed with Court of Chancery and mailed or delivered to the personal representative [§906(a)]; spouse must give interested persons and affected distributees 10 days' notice of time/date of hearing via certified mail [§906(b)]. Right of election must be exercised during spouse's lifetime by spouse, personally, or if spouse is a "protected person," by order of the court in which protective proceedings are pending, after finding that exercise is necessary to provide spouse with adequate support during spouse's probable life expectancy [§904]. |
| Spouse's Right vs. Non-Domiciliary Property | Included in the "elective estate" under §902, but law of situs applies under §901(b). |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | Non-domiciliary spouse's elective share of Delaware property is determined under Delaware law [§901(b)]. N.B. When read in conjunction with §901(a), spouse of non-Delaware decedent precluded from taking an elective share of Delaware real property, regardless of whether the domicile jurisdiction permits an election. |
| Waiver / Preclusion of Spouse's Rights: | Spouse's right of election may be waived, wholly or partially, before or after marriage, by written contract, agreement, or waiver signed by spouse; absent contrary provision, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse is a waiver of all rights to the elective share and a renunciation of all benefits otherwise passing to spouse by intestate succession or under a will executed before the waiver [§905]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

DISTRICT OF COLUMBIA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|--|
| Common Law | Probate-Only | Division III, Title 19, Chapter 1, Section 113 |

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|---|---|
| Intestacy - Spouse's Share: | Entire estate, if no descendant or parent of decedent survives; 2/3 of estate if decedent's surviving descendants are also descendants of spouse and there is no other descendant of spouse surviving; 3/4 of estate if decedent has no surviving descendants but has surviving parent(s); 1/2 of estate if all of decedent's surviving descendants are also descendants of spouse and spouse has one or more separate surviving descendants; 1/2 of estate if one or more of decedent's surviving descendants are not descendants of spouse [§19-302]. |
| Allowance(s) / Exemption(s): | Spouse is entitled to a homestead allowance of \$15,000 [§19-101.02], an exempt property allowance of \$10,000 [§19-101.03], and a reasonable family allowance during the period of administration [§19-101.04], all without regard to elective share. |
| Elective Share Rights: | Value of elective share is spouse's intestate share but not in excess of 1/2 of decedent's net estate distributable under will [§19-113]. A domestic partner is treated as a spouse under D.C. law. |
| Property Subject to Elective Share: | See spouse's intestate share above. In <i>Windsor v. Leonard</i> , 475 F.2d 932 (1973), the D.C. Circuit Court of Appeals ruled that a decedent's revocable trust property was excluded from the spouse's elective share, and refused to set aside decedent's transfer of property to the revocable trust as being in improper evasion of the spouse's statutory rights. Congress directed D.C. to follow Maryland precedent for interpreting statutes that are similar between the jurisdictions [see <i>Windsor</i> , at 933]. This ruling, in conjunction with recent Maryland precedent, leaves open the possibility of including revocable trust property under certain circumstances, i.e., where the transfer is shown to be an improper evasion of the spouse's elective share rights [see discussion under Maryland section of this survey]. |
| Satisfaction of Elective Share: | Estate property is to be distributed in-kind to the extent possible [§20-1102]. No statutory direction for satisfaction of elective share. |
| Deadline for Election: | Renunciation of will must be filed within six months after decedent's will is admitted to probate [§19-113(a)]; successive extensions of not more than six months each may be granted for reasonable cause upon petition filed before expiration of deadline [§19-113(c)]. |
| Election Procedure / Who Can File?: | Renunciation must be filed in the Probate Court (Superior Court of the District of Columbia) [§§19-113(a) and 19-115(3)]. Renunciation may be filed by spouse, personally, or by guardian or other fiduciary (having court authority) for spouse who is unable to act by reason of infancy, incompetency, or inability to manage property [§19-113(c)]. |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | No statutory provision. However, under <i>In re of Gray Estate</i> , 168 F. Supp. 124 (1958), the right of a non-domiciliary spouse to take an elective-share of property in D.C. is determined under D.C. law. §19-301 states that D.C. real property that is not devised descends to intestate heirs determined under D.C. law. |
| Waiver / Preclusion of Spouse's Rights: | Rights of spouse in decedent's real and personal property can be determined under a valid premarital or marital agreement [§19-113(f)]. |

SURVIVING SPOUSE’S RIGHTS TO SHARE IN DECEASED SPOUSE’S ESTATE

FLORIDA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|---|
| Common Law | Semi-Augmented | Title XLII, Chapter 732, Part II, Section 201-228 |

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|---|--|
| Intestacy - Spouse’s Share: | Entire estate if decedent (a) has no living descendants, or (b) is survived by one or more descendants common to spouse and spouse has no separate descendants; 1/2 of estate if decedent (c) has living descendants, one or more of whom are not those of spouse, or (d) has one or more living descendants in common with spouse, and spouse has one or more separate descendants [§732.102(1) through (4)]. |
| Allowance(s) / Exemption(s): | Spouse is entitled to life estate in the homestead [§732.401], exempt property [§732.402], and a family allowance up to \$18,000 [§732.403], all without regard to the elective share. |
| Elective Share Rights: | Spouse of domiciliary decedent has the right to an elective share of the decedent’s “elective estate” [§732.201]; the elective share is an amount equal to 30% of the “elective estate” [§732.2065]. |
| Property Subject to Elective Share: | Decedent’s “elective estate” includes: (1) decedent’s probate estate; (2) decedent’s interest in property constituting protected homestead; (3) decedent’s ownership interest in accounts or securities registered as pay/transfer on death; (4) decedent’s fractional interest in property held in joint tenancy with right of survivorship or in tenancy by the entirety; (5) property of decedent’s revocable trust; (6) property decedent transferred and, at the time of death, retained a beneficial interest or enjoyed possession or use of; (7) decedent’s beneficial interest in net cash surrender value of insurance policy on decedent’s life; (8) value of retirement benefits; (9) property decedent transferred within one year of death in excess of the annual exclusion amount; and (10) property transferred in satisfaction of the elective share [§732.2035]. Valuation of “elective estate” determined under §732.2055. |
| Satisfaction of Elective Share: | Under §732.2075, elective share is satisfied first by property passing to or for the benefit of spouse. If insufficient, share is allocated to the following classes in the following order: Class 1: decedent’s probate estate and revocable trust(s). Class 2: If Class 1 insufficient, then to recipients of property interests, other than protected charitable interests, included in the elective estate under §732.2035(2), (3), or (6) and, to the extent decedent had at the time of death the power to designate the recipient of the property, property interests, other than protected charitable interests, included under §732.2035(5) and (7). Class 3: If Classes 1 and 2 insufficient, then to recipients of all other property interests, other than protected charitable interests, included in the elective estate. If still insufficient, any remaining unsatisfied balance shall be satisfied from direct recipients of protected charitable lead interests [§732.2075]. |
| Deadline for Election: | Election must be filed on/before the earlier of (a) six months after the date of service of a copy of the notice of administration on spouse, or an attorney in fact or guardian of the property of spouse, or (b) the date that is two years after decedent’s date of death [§732.2135(1)]. Deadline for election can be extended via petition filed within deadline period [§732.2135(4)]. |
| Election Procedure / Who Can File?: | Election must be filed with court having jurisdiction of probate proceeding [§732.2125(2)]. Spouse, personally, or attorney-in-fact or guardian of the property of the spouse with approval of court of competent jurisdiction, after court determination that election is in the spouse’s best interests during spouse’s probable lifetime [§732.2125(1) and (2)]. |
| Spouse’s Right vs. Non-Domiciliary Property | Non-Florida real property is part of the “probate estate” under §732.2025(7), and the “probate estate” is part of the “elective estate” under §732.2035(1). |
| Spouse’s Right vs. Situs Property of Non-Domiciliary Decedent: | Right to elective share is limited to spouse of Florida domiciliary decedent [§732.201]. |
| Waiver / Preclusion of Spouse’s Rights: | Spouse’s rights to an elective share, intestate share, pretermitted share, homestead, exempt property, family allowance, and/or preference in appointment as personal representative of intestate estate may be waived, wholly or partly, before or after marriage, by a written contract, agreement, or waiver, signed by the waiving party in the presence of two subscribing witnesses [§732.702]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

GEORGIA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|---------------------------------|
| Common Law | None | N/A |

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|---|--|
| Intestacy - Spouse's Share: | Entire estate if decedent has no living descendants; if decedent survived by one or more descendants, spouse shares equally with children (per stirpital basis), but share is not less than 1/3 of estate [§53-2-1]. Spouse may claim certain property interests of insolvent, intestate decedent [§44-13-100]. Spouse also entitled to one-year's support, which is a priority item above debts and is in addition to intestate share [§53-3-1(b)]. |
| Allowance(s) / Exemption(s): | No allowances provided for spouse under Georgia law; provision for one year's support only (see below). |
| Elective Share Rights: | <i>No elective share</i> ; spouse entitled only to one year's support [§53-3-1(c)]. |
| Property Subject to Elective Share: | N/A. Spouse's petition for year's support must include schedule of property to be set aside in satisfaction of support [§53-3-5]. |
| Satisfaction of Elective Share: | N/A |
| Deadline for Election: | Petition for one year's support must be filed within 24 months of decedent's death [§53-3-5(c)]. |
| Election Procedure / Who Can File?: | Petition for one year's support must be filed in probate court by spouse, or guardian or other person acting on spouse's behalf [§53-3-5(a)]. Required contents of petition set forth in §53-3-5(b). |
| Spouse's Right vs. Non-Domiciliary Property | N/A |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | Non-domiciliary spouse is entitled to one year's support from Georgia property (see <i>Farris v. Battle</i> , 80 Ga. 187 (1887)). |
| Waiver / Preclusion of Spouse's Rights: | Premarital agreements permitted under §19-3-63; postnuptial agreements are valid under <i>Sanders v. Colwell</i> , 248 Ga. 376 (1981). |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

HAWAII

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|------------------------|--|
| Common Law | Augmented Estate – UPC | Div. 3, Title 30A, Ch. 560, Art. II, Pt. 2, Sec's. 201-214 |

| | |
|---|--|
| Intestacy - Spouse's Share: | Entire estate if (a) decedent has no surviving parent or descendant or (b) all descendant's decedents are descendants of spouse; \$200,000 plus 3/4 of the balance if decedent has surviving parent(s) but no descendants; \$150,000 plus 1/2 of the balance if decedent and spouse have common descendants who survive and spouse has separate descendant(s) surviving; \$100,000 plus 1/2 of the balance if decedent has surviving descendant(s) who are not descendants of spouse [§560:2-102 (1) through (4)]. |
| Allowance(s) / Exemption(s): | Spouse entitled to: homestead allowance of \$15,000 [§560:2-402]; exempt property up to \$10,000 [§560:2-403]; and, a reasonable allowance for maintenance during the period of administration, or, up to one year if the estate is insolvent [§560:2-404], all without regard to the elective share. |
| Elective Share Rights: | Spouse of domiciliary decedent has the right to an elective share amount equal to (a) the value of the elective share percentage of the augmented estate, ranging from 3% to 50%, determined under marriage duration vesting schedule [§560:2-202(a)]; or, (b) a supplemental elective share amount equal to \$50,000 less (i) spouse's property and non-probate transfers to others (§560:2-207), (ii) decedent's probate and non-probate transfers to spouse (§560:2-209(a)(1)), and (ii) the elective share amount payable from decedent's probate and non-probate transfers to others under §560:2-209(b) and (c) [§560:2-202(b)]. |
| Property Subject to Elective Share: | Augmented estate includes: the sum of all property, real or personal, moveable or immovable, tangible or intangible, wherever situated that constitute (a) decedent's net probate estate; (b) decedent's non-probate transfers to others, (c) decedent's non-probate transfers to spouse, and (d) spouse's property and non-probate transfers to others [§560:2-203]. |
| Satisfaction of Elective Share: | The following are applied first to satisfy the elective share amount and to reduce/eliminate contributions from decedent's probate estate and non-probate transfers to others: (a) amounts included in the augmented estate under §560:2-204 passing to spouse by testate or intestate succession and non-probate transfers to spouse under §560:2-206 [§560:2-209(a)(1)]; and, (b) spouse's property and non-probate transfers to others included in the augmented estate up to the applicable percentage under §560:2-207 [§560:2-209(a)(2)]. If the foregoing is insufficient, or if spouse is entitled to a supplemental elective share amount, amounts included in decedent's probate estate and in decedent's non-probate transfers to others, <i>other than amounts included under §560:2-205(3)(A) or (C)</i> , are applied first to satisfy the balance or the supplemental elective, and liability is equitably apportioned among recipients of probate and non-probate transfers [§560:2-209(b)]. If the foregoing is insufficient, balance is paid from remaining portion of decedent's non-probate transfers, and equitably apportioned among the recipients [§560:2-209(c)]. |
| Deadline for Election: | Must petition for elective share within nine months after the date of death, or within six months after probate of decedent's will, whichever occurs later [§560:2-211(a)]. Additional time for making election can be obtained by petition filed within nine months of decedent's death [§560:2-211(b)]. |
| Election Procedure / Who Can File?: | Election made by filing petition with probate court and delivering same to personal representative, if any, within the deadline [§560:2-211(a)]. Spouse, personally, or spouse's conservator, guardian, or attorney-in-fact can file petition; spouse must be living at the time of election [§560:2-212(a)]. |
| Spouse's Right vs. Non-Domiciliary Property | Included in the augmented estate under §560:2-203. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | The right of a non-domiciliary decedent's spouse to take an elective share of property in Hawaii is governed by the law of decedent's domicile at death [§560:2-202(d)]. |
| Waiver / Preclusion of Spouse's Rights: | Rights of/to election, homestead allowance, exempt property, and/or family allowance may be waived wholly or partially before or after marriage by written contract, agreement, or waiver signed by spouse [§560:22-213(a)]. Absent provisions to the contrary, a waiver of "all rights", or equivalent language, in the property or estate of a present or prospective spouse is a waiver of all rights of elective share, homestead allowance, exempt property, and family allowance in the property of the other and a renunciation by each of all benefits that would otherwise pass to the spouse from the other by intestate succession or by virtue of any will executed before the waiver [§560:22-213(d)]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

IDAHO

| Property Regime | Elective Share Type | Elective Share Statute Location |
|--------------------|---------------------|---------------------------------|
| Community Property | N/A | |

| | |
|---|--|
| Intestacy - Spouse's Share: | As to separate property: entire estate if decedent has no surviving issue or parent; 1/2 of estate if decedent has surviving parent(s) and/or issue [§15-2-102(a)]. As to community property: decedent's 1/2 passes to spouse in all events [§15-2-102(b)(1)]. |
| Allowance(s) / Exemption(s): | Spouse entitled to homestead allowance of \$50,000; in addition, spouse is entitled to [a] value, not exceeding \$10,000 in excess of any security interests therein, in tangible personal property including, but not limited to, household furniture, automobiles, furnishings, appliances, family heirlooms, and personal effects [§15-2-402 through §15-2-405]. N.B. Elective share to the quasi-community estate thus computed shall be reduced by an allocable portion of general administration expenses, homestead allowance, exempt property and enforceable claims [§15-2-203(b)]. |
| Elective Share Rights: | N/A if all property is community property. Spouse of domiciliary decedent may take an elective share of quasi-community property, value of which is limited to 1/2 of the total "augmented quasi-community property estate" [§15-2-203(a)], reduced by allocable portion of administration expenses, homestead allowance, exempt property, and enforceable claims [§15-2-203(b)]. |
| Property Subject to Elective Share: | N/A if all property is community property. The "augmented quasi-community property estate" includes, as a part of the property described in §§15-2-201 (quasi-community property) and 15-2-202 (quasi-community property decedent transferred to others during life or at death by right of survivorship, subject to dollar limitations), property received from decedent and owned by spouse at decedent's death, plus the value of such property transferred by spouse at any time during marriage to any person other than decedent which would have been in spouse's quasi-community property augmented estate if spouse had predeceased decedent to the extent that the owner's transferred property is derived from decedent by any means other than testate or intestate succession without a full consideration in money or money's worth [§15-2-203(a)]. |
| Satisfaction of Elective Share: | N/A if all property is community property. Court determines the elective share amount and orders payment from the assets of the augmented net estate or by contribution as appears appropriate under §15-2-207 [§15-2-205(d)]. Property passing to spouse and property included in the augmented estate which has not been renounced is applied first to satisfy the elective share and to reduce the amount due from other recipients of the augmented estate [§15-2-207(a)]. Balance of elective share is equitably apportioned among beneficiaries of the will and transferees of the augmented estate in proportion to the value of their interests [§15-2-207(b)]. |
| Deadline for Election: | N/A if all property is community property. Must petition for elective share of augmented net estate within nine months after the date of death, or within six months after filing of the petition for probate, whichever occurs later; court may extend time for election for good cause upon application for additional time filed within deadline [§15-2-205(a)]. |
| Election Procedure / Who Can File?: | N/A if all property is community property. Petition for elective share of augmented net estate must be filed with the court and mailed or delivered to the personal representative [§15-2-205(a)]. Spouse, personally, or by order of the court in which protective proceedings as to spouse's property are pending, after finding that exercise is necessary to provide adequate support for the protected spouse during probable life expectancy [§15-2-204]. Right exercisable only during spouse's lifetime [§15-2-204]. |
| Spouse's Right vs. Non-Domiciliary Property | Included in the augmented quasi-community property estate under §15-2-201(b) if law of other state permits descent and distribution to be governed by Idaho laws [§15-2-201(b)]. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | Under valid will of any non-domiciliary married person disposing of Idaho real property which is not community property, spouse has the same right to elect against will to take a portion of or interest in such property as though the property were situated in the decedent's domicile at death [§15-2-209]. |

SURVIVING SPOUSE’S RIGHTS TO SHARE IN DECEASED SPOUSE’S ESTATE

| IDAHO, continued | |
|--|--|
| Waiver / Preclusion of Spouse’s Rights: | Spouse’s rights of/to election, homestead allowance, and/or exempt property may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the party waiving after fair disclosure [§15-2-208]. Absent language to the contrary in the instrument, waiver of “all rights” (or equivalent language) in the property or estate of a present or prospective spouse is a waiver of all rights to elective share, homestead allowance, and/or exempt property and a renunciation of all benefits which would otherwise pass by intestate succession or under a will executed before the waiver [<i>Id.</i>]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

ILLINOIS

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|---|
| Common Law | Probate-Only | Chapter 755 Estates, Prob. Act of 1975, Article II, Section 8 |

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|---|---|
| Intestacy - Spouse's Share: | Entire estate, if decedent has no surviving descendants; 1/2 of estate if decedent has surviving descendant(s) [§755:5/2-1(a) and (c)]. <i>N.B. new law taking effect January 1, 2018 does not change intestate share of surviving spouse.</i> |
| Allowance(s) / Exemption(s): | Spouse entitled to allowance for nine months after decedent's death in a manner suited to spouse's condition of life and to the condition of the estate, and any additional sum the court deems reasonable for spouse's proper support, in an amount no less than \$20,000 with an additional sum not less than \$10,000 for each child. (See 755 I.L.C.S. 5/15-1). |
| Elective Share Rights: | Spouse may renounce decedent's will and take an elective share of decedent's estate after payment of all just claims of either (a) 1/3 of the entire estate if decedent leaves a descendant, or (b) 1/2 of the entire estate if decedent leaves no descendant [755:5/2-8(a)]. |
| Property Subject to Elective Share: | Decedent's entire probate estate is subject to the elective share [755:5/2-8(a)]. |
| Satisfaction of Elective Share: | If spouse's renunciation of will diminishes or increases legacies to other persons, the court, upon settlement of the estate, will abate from or add to the legacies to apportion the loss or increase among the legatees in proportion to the amount and value of their legacies [755:5/2-8(d)]. |
| Deadline for Election: | Must renounce decedent's will within seven months after the admission of the will to probate, or within such further time as court may allow, upon petition for additional time filed before the deadline [755:5/2-8(b)]. |
| Election Procedure / Who Can File?: | Renunciation must be filed in the court where decedent's will was admitted to probate [755:5/2-8(b)]. Renunciation must be filed by spouse, personally, or spouse's conservator, guardian ad litem, or next friend acting with court authority for incompetent spouse under <i>In re Estate of Klekunas</i> , 205 N.E. 2d 497 (1965). |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision, but case law holds that non-Illinois property is excluded from elective share (see, e.g., <i>Clark v. Pericles</i> , 266 Ill. App. 3d 1096 (1994)). |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | No statutory provision, but case law holds that real property is governed under the law of the situs jurisdiction (see, e.g., <i>Clark v. Pericles</i> , 266 Ill. App. 3d 1096 (1994)). |
| Waiver / Preclusion of Spouse's Rights: | Parties to premarital agreement may contract with respect to, <i>inter alia</i> , rights and obligations in any property, disposition of property upon death, making of a will, trust, or other arrangement to carry out provisions of agreement, ownership and disposition of life insurance policy benefits [§750:10/4(a)]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

INDIANA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|---|
| Common Law | Probate-Only | Title 29, Article 1, Chapter 3, Section 1-8 |

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|---|--|
| Intestacy - Spouse's Share: | Entire net estate if decedent leaves no surviving issue or parent; 1/2 of net estate if decedent has surviving issue; 3/4 of net estate if decedent has no surviving issue but is survived by parent(s) [§29-1-2-1(b)]. If spouse is second or subsequent spouse of decedent and spouse had no children with decedent, and if decedent has surviving issue, the spouse's share is 25% of remainder of the fair market value (as of date of death) of decedent's real property, net of any liens or encumbrances [§29-1-2-1(c)]. |
| Allowance(s) / Exemption(s): | Spouse entitled to an allowance of \$25,000 [§29-1-4-1] without regard to elective share. |
| Elective Share Rights: | Spouse may elect to take against decedent's will an elective share of 1/2 of decedent's net estate; except that if spouse is a second or subsequent spouse who did not at any time have children or descendants with decedent, and if decedent has surviving descendants by a previous spouse, then the spouse's elective share is 1/3 of the net estate plus twenty-five percent (25%) of the remainder of the fair market value (as of date of death) of decedent's real property, net of any liens or encumbrances [§29-1-3-1]. |
| Property Subject to Elective Share: | Decedent's net estate for purposes of computing the elective share amount due to spouse includes only such property as would have passed under the laws of descent and distribution [§29-1-3-1(a)]. N.B. <i>Dunnewind v. Cook</i> , 697 N.E.2d 485 (1998), wherein court invalidated decedent's transfer of assets, made in contemplation of death, to a valid <i>inter vivos</i> trust for the purpose of defeating spouse's statutory share. |
| Satisfaction of Elective Share: | Elective share satisfied through abatement of non-spouse legatees' shares without any preference between real or personal property, in the following order: property not disposed of by will, residuary estate assets, property disposed of by the will but not specifically devised or not devised to the residuary devisee, and then property specifically devised [§29-1-17-3]. |
| Deadline for Election: | Must elect within three months after the date of the order admitting to probate the will against which the election is made [§29-1-3-2]. |
| Election Procedure / Who Can File?: | Election must be in signed, acknowledged writing, filed in the office of the clerk of the court; suggested form provided in statute [§29-1-3-3]. Right of election is non-transferrable and must be exercised during spouse's lifetime [§29-1-3-4(a)]; provided, however that election can be exercised after spouse's death if spouse died before election could be made, or if election is made to recover Medicaid benefits paid on behalf of surviving spouse [§29-1-3-4(b)]. Spouse, personally, or attorney-in-fact with general authority [§29-1-3-4(a)], or guardian of spouse may make the election [§29-1-3-3(a) and §29-1-3-4(a)]. |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | No statutory provision. |
| Waiver / Preclusion of Spouse's Rights: | Spouse may waive intestate share or other expectancy by contract, agreement, or waiver signed by spouse; unless provided otherwise in agreement, waiver signed by spouse is considered waiver of right of election [§§29-1-2-13 and 29-1-3-6(a)]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

IOWA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|--|
| Common Law | Probate-Only * | Title XV, Sub. 4, Ch. 633, Div. 5, Pt. 1, Sections 236-246 |

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|---|---|
| Intestacy - Spouse's Share: | Entire estate if decedent has (a) no surviving issue or (b) surviving issue all of whom are issue of spouse [§633-211]. If decedent has surviving issue who are not issue of spouse, spouse receives 1/2 of all real property of the decedent, all personal property of decedent as head of family, and 1/2 of all other personal property of decedent after payment of debts and charges [§633-212(1) through (4)]; provided, if value of the foregoing (1-4) is less than \$50,000, then additional homestead interest and decedent's remaining real and personal property after payment of debts and charges [§633-212(4)]. |
| Allowance(s) / Exemption(s): | Spouse entitled to 12-months' support [§633.374] and exempt property [633.332], both without regard to elective share. |
| Elective Share Rights: | Spouse of domiciliary decedent has the right to take an elective share [§633.236] of the following: (a) 1/3 of all the legal or equitable estates in real property possessed by decedent at any time during the marriage, (b) all personal property that was in the hands of decedent at the time of death as the head of a family, (c) 1/3 of all personal property of decedent not necessary for the payment of debt and charges, and (d) 1/3 in value of property held in decedent's revocable trust (unless waived), in lieu of property spouse would receive under decedent's will [§633.238(1) through (3)]. Electing spouse, or spouse of intestate decedent, may elect a life estate in the homestead in lieu of spouse's share of decedent's real property possessed during marriage, and nonetheless retain right to personal property [§633.240]. |
| Property Subject to Elective Share: | Elective share property is described generally above [see §633.238]. * In addition, §633.238.1.d provides that decedent's revocable trust property is subject to the elective share unless the trust was created during the marriage and spouse signed a written acknowledgment forfeiting right to the trust property after decedent's death. |
| Satisfaction of Elective Share: | Satisfaction of elective share is determined by mutual consent of parties in interest, or by court-appointed referees if interested party requests appointment of referee [§633.247]. Spouse may receive life estate in the homestead in lieu of elective share as to real property owned by decedent [§633.240]. |
| Deadline for Election: | Elective share election must be filed within four months from the date of service of notice by the (a) personal representative of decedent's estate [§633.237(a)] or (b) trustee of decedent's revocable trust [§633.237(b)], otherwise spouse presumed to take under will or trust [§633.237]. Election to receive life estate in homestead presumed to be waived if election not filed within four months from date of service of notice under §633.237 [§633.241]. |
| Election Procedure / Who Can File?: | Election must be filed in the office of the clerk in which decedent's estate is being administered and served on the trustee of decedent's revocable trust [§633.243]. Election must be made during spouse's lifetime [§633.242] by spouse, personally, or otherwise by spouse's conservator if court deems appropriate under the circumstances [see §§633-236 and 633-244]; court will appoint guardian ad litem to represent incompetent spouse if affidavit of incompetence filed and no conservator has been appointed [§633.244]. |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision; however, language of §633.238 does not limit share to Iowa-situs real property. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | If decedent is non-domiciliary of Iowa, no statutory provision for electing against will; right of election applies only to spouse of Iowa-resident decedent [§633.236]. |
| Waiver / Preclusion of Spouse's Rights: | Parties to premarital agreement may contract with respect to <i>inter alia</i> rights and obligations of parties in property, disposition of property upon death, making of a will, trust, or other arrangement to carry out provisions of agreement [Title XV, Sub. 1 §596.5]. Spouse may waive right to elect against revocable trust created during marriage by signing statement of waiver of right as provided in §633.238.1.d. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

KANSAS

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|------------------------|--|
| Common Law | Augmented Estate – UPC | Chapter 59, Article 6a, Sections 201-217 |

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|---|---|
| Intestacy - Spouse's Share: | Entire estate if decedent has no surviving issue; 1/2 of the estate if decedent has surviving issue [§59-504]. Spouse entitled to 1/2 of all real property of decedent, disposition of which spouse did not consent to in writing, by will, or by election, provided that spouse was resident of Kansas at the time of conveyance [§59-505]. |
| Allowance(s) / Exemption(s): | Spouse entitled to homestead exemption subject to location and acreage restrictions [§59-401], and allowances for exempt personal property [§59-403(a)] and monetary allowance up to \$50,000 [§59-403(b)] in the court's discretion. These entitlements are provide for without regard to elective share [§59-404]. |
| Elective Share Rights: | Spouse of domiciliary decedent has the right to an elective share amount equal to (a) the value of the elective share percentage of the augmented estate, ranging from 3% to 50%, determined under marriage duration vesting schedule [§59-6a202(a)(1)]; or, (b) a supplemental elective share amount equal to \$50,000 less (i) spouse's property and non-probate transfers to others (§59-6a207), (ii) decedent's probate and non-probate transfers to spouse (§59-6a209(a)(1), and (ii) the elective share amount payable from decedent's probate and non-probate transfers to others under §59-6a209(b) and (c) [§59-6a202(b)]. |
| Property Subject to Elective Share: | Augmented estate is the sum of the values of all property that constitute decedent's net probate estate, decedent's non-probate transfers to others, decedent's non-probate transfers to spouse, and spouse's property and non-probate transfers to others [§59-6a203]. |
| Satisfaction of Elective Share: | The following are applied first to satisfy the elective share amount and to reduce/eliminate contributions from decedent's probate estate and non-probate transfers to others: (a) amounts included in the augmented estate under §59-6a204 passing to spouse by testate or intestate succession and non-probate transfers to spouse under §59-6a206 [§59-6a209(a)(1)]; (b) amounts included in the augmented estate which spouse disclaimed and therefore pass to spouse's issue who are not issue of decedent; (c) spouse's property and non-probate transfers to others included in the augmented estate up to the applicable percentage under §59-6a207 [§59-6a209(a)(3)]; and (d) real property of decedent recovered under §59-505 [§59-6a209(a)(4)]. If the foregoing is insufficient, or if spouse is entitled to a supplemental elective share amount, amounts included in decedent's probate estate and in decedent's non-probate transfers to others, <i>other than amounts included under §59-6a205(c)(1) or (3)</i> , are applied first to satisfy the balance or the supplemental elective, and liability is equitably apportioned among recipients of probate and non-probate transfers [§59-6a209(b)]. If the foregoing is insufficient, balance is paid from remaining portion of decedent's non-probate transfers, and equitably apportioned among the recipients [§59-6a209(c)]. |
| Deadline for Election: | Election must be made within six months after the date of decedent's death, or within six months after the notice of the right to the elective share pursuant to §59-2233, and amendments thereto, whichever occurs later [§59-6a211]. |
| Election Procedure / Who Can File?: | Petition must be filed with the court and mailed or delivered to the personal representative [§59-6a211(a)]; spouse may petition for extension of time to elect before deadline [§59-6a211(b)]. Right of election to elective share amount exercisable by the spouse, by the personal representative of deceased spouse, or by court on behalf of disabled spouse [59-6a212(a)]; right of election to supplemental elective share amount, homestead, and/or statutory allowance may be exercised by the spouse, conservator, agent under a power of attorney, guardian ad litem appointed for spouse, or by the court on behalf of a disabled spouse [59-6a212(b)]. |
| Spouse's Right vs. Non-Domiciliary Property | Included if out-of-state property meets definitions provided for composition of augmented estate in §59-6a204 through §59-6a207. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | Spouse's right to elect, and method for so doing, apply to Kansas-situs property; however, Kansas law deemed not to affect rights of surviving spouse established in state of residency [§59-806]. |

SURVIVING SPOUSE’S RIGHTS TO SHARE IN DECEASED SPOUSE’S ESTATE

| KANSAS, continued | |
|--|--|
| Waiver / Preclusion of Spouse’s Rights: | Spouse’s rights of/to elective share, homestead, homestead allowance, and/or the family allowance, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, consent to any instrument, or waiver signed by the spouse [§59-6a213(a)]. Absent contrary provision, a waiver of “all rights,” or equivalent language, in the property or estate of a present or prospective spouse is a waiver of all rights of elective share benefits by intestate succession or by virtue of any will executed before the waiver. For documents executed on and after July 1, 2002, to waive the homestead, homestead allowance, and/or family allowance, the language of the document must clearly provide that any such provisions were understandably and knowledgeably waived [§59-6a213(d)]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

KENTUCKY

| Property Regime | Elective Share Type | Elective Share Statute Location |
|---|---|--|
| Common Law | Probate-Only | Title XXXIV, Chapter 392, Sections 010-140 |
| Intestacy - Spouse's Share: | Spouse receives entire estate only if decedent has no surviving (a) children/descendants, (2) parent(s), (3) siblings, and/or (4) descendants of siblings; if any of the foregoing survives, spouse receives no intestate share [§§391.010 and 391.030(1)]. | |
| Allowance(s) / Exemption(s): | Spouse entitled to homestead exemption [§427.070], which is an alternative to dower – they are mutually exclusive [see <i>In re Gibson</i> , 33 F.Supp 838 (1940)]. Spouse also entitled to personal property exemption up to \$15,000 [§391.030] without regard to the elective share [§391.030(4)(c)]. | |
| Elective Share Rights: | Renunciation of will provides statutory dower or curtesy rights, as follow: 1/2 of decedent's surplus real estate; a life estate in one-third (1/3) of any real estate seized during coverture; and 1/2 of decedent's surplus personalty [§§392.080 and 392.020]. | |
| Property Subject to Elective Share: | Decedent's real estate and personalty are subject to spouse's dower or curtesy interests in such property upon renunciation of will [see §392.020 Dower or Curtesy]. N.B. Under <i>Harris v. Rock</i> , 799 S.W.2d 10 (1990), decedent cannot make lifetime gifts of real or personal property with the intent to defeat spouse's claims to dower. | |
| Satisfaction of Elective Share: | Renouncing spouse receives dower or curtesy rights in decedent's real estate and personalty [§§392.080 and 392.020]. | |
| Deadline for Election: | Statement relinquishing provisions under will must be filed within six months of admission of will to probate, and can be extended six additional months upon application of spouse to the district court before the initial six-month deadline [§392.080(1)(b)]. | |
| Election Procedure / Who Can File?: | Statement relinquishing provisions under will, acknowledged before an officer authorized to administer oaths under Kentucky law and evidenced by a certificate, must be filed with the clerk of the court where will was admitted to probate; statement language provided in statute [§392.080(1)(a) and (b)]. Spouse can renounce [§392.080]. No statutory provision for renunciation by fiduciary or agent of spouse, but under <i>Miller v. Keown</i> , 195 S.W. 430, 433 (1917), a court of chancery overseeing the interests of "insane persons, idiots, and others who are legally incapacitated" may "renounce the provisions of a will on behalf of such ward if it is to the ward's interest that the renunciation be made." Also see <i>Ramsey's Ex'r v. Ramsey</i> , 47 S.W.2d 1059 (1932). | |
| Spouse's Right vs. Non-Domiciliary Property | §392.080 confers right of election to "survivor" without reference to domicile. N.B. Spouse of domiciliary decedent who renounces will is bound by the renunciation as to property outside of Kentucky. See, e.g., <i>Mann v. Peoples-Liberty Bank & Trust Co.</i> , 256 S.W.2d 489 (1953). | |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | No statutory provision. Renunciation statute [§392.080] does not limit election to spouse of domiciliary decedent. | |
| Waiver / Preclusion of Spouse's Rights: | §392.020 provides dower or curtesy interest unless survivor's right "has been barred, forfeited or relinquished." Dower and curtesy rights can be waived under premarital agreement [see, e.g., <i>Gaines v. Gaines' Adm'r</i> , 163 Ky. 260 (1915)] or marital agreement [see, e.g., <i>Jones' Adm'r v. Jones' Adm'r</i> , 280 Ky. 37 (1939) and <i>Campbell v. Campbell</i> , 377 S.W.2d 93 (1964)]. | |
| Miscellaneous: | Kentucky retains dower and curtesy [see §392.020]. | |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

LOUISIANA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|--------------------|---------------------|---------------------------------|
| Community Property | N/A | |

| | |
|---|---|
| Intestacy - Spouse's Share: | As to decedent's community property: entire share if decedent has no surviving descendant(s); usufruct interest if decedent has surviving descendant(s) but only until death or remarriage of spouse [C.C. Art. §§889-890]. |
| Allowance(s) / Exemption(s): | Homestead exemption under R.S. §20:1.B. When a succession is sufficiently solvent, spouse is entitled to a reasonable periodic allowance in money for their maintenance during the administration period, if the court concludes that such an allowance is necessary, provided the sum advanced are within the amount eventually due to them [C.C.P. §3321]. |
| Elective Share Rights: | N/A. However, Louisiana has a hybrid quasi-community property statute [C.C. Art. §3526]. |
| Property Subject to Elective Share: | <p>Hybrid Quasi-Community Property: (a) property that is classified as community property under Louisiana law is treated as community property [C.C. Art. §3526(1)]; and property that is not classified as community property under Louisiana law is treated as the separate property of the acquiring spouse. Non-acquiring spouse is entitled, in value only, to the same rights with regard to such property as would be granted by the law of the state in which the acquiring spouse was domiciled at the time of acquisition [C.C. Art. §3526(2)].</p> <p>N.B. See Annotation to C.C. Art. §3526, which clarifies the intent of this provision as follows: any property purchased in a common law jurisdiction <i>during</i> marriage will be treated as community property if the owner died while domiciled in Louisiana. Any property purchased in a common law <i>before</i> a marriage is subject to distribution under laws of the situs jurisdiction even if the owner died while domiciled in Louisiana.</p> |
| Satisfaction of Elective Share: | N/A |
| Deadline for Election: | N/A |
| Election Procedure / Who Can File?: | N/A |
| Spouse's Right vs. Non-Domiciliary Property | If decedent or spouse is domiciled in Louisiana, spouses' rights and obligations with regard to real property in another state acquired during marriage by either spouse while domiciled in Louisiana, which would be community property if situated in Louisiana, are determined in accordance with Louisiana law, enforceable by a judgment recognizing the spouse's right to a portion of the immovable or its value [C.C. Art. §3525]. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | <p>Death of Domiciliary Acquiring Spouse: rights and obligations with regard to Louisiana real property are governed by Louisiana law; whether such property is community or separate property is determined in accordance with Louisiana law, regardless of the domicile of the acquiring spouse at the time of acquisition [C.C. Art. §3524].</p> <p>Death of Non-Domiciliary Acquiring Spouse / Louisiana Real Property Acquired When Domiciled Outside Louisiana: spouse's rights to Louisiana real property which is not community property – <i>in value only</i> – are determined under laws of situs jurisdiction [C.C. Art. §3527].</p> |
| Waiver / Preclusion of Spouse's Rights: | Premarital and marital agreements are allowable under Louisiana law [C.C. Art. §2325 <i>et seq.</i>], although some marital agreements require court approval, depending on circumstances of the marriage and nature of the rights being changed in the agreement [C.C. Art. §2329]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

MAINE

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|------------------------|--|
| Common Law | Augmented Estate – UPC | Title 18-A, Article II, Part 2, Sections 201-207 |

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|---|--|
| Intestacy - Spouse's Share: | Entire estate if decedent has no surviving issue or parent; \$50,000 plus 1/2 of the balance if decedent has (a) surviving parent and no surviving issue or (b) surviving issue all of whom are issue of the spouse; 1/2 of the estate if decedent has surviving issue, one or more of whom are not issue of the spouse [18-A §2-102]. |
| Allowance(s) / Exemption(s): | Spouse of domiciliary decedent entitled to: a homestead allowance of \$10,000; exempt property not exceeding \$7,000 in excess of any security interests; and, a reasonable allowance for maintenance which may not continue for longer than one year if the estate is insolvent [18-A §2-401-403], all without regard to elective share [18-A §2-206]. |
| Elective Share Rights: | Spouse of domiciliary decedent has right of election to take elective share of 1/3 of decedent's augmented estate [18-A §2-201.A]. |
| Property Subject to Elective Share: | Augmented estate means the value of the estate reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following: (1) the value of property decedent transferred during marriage to anyone other than spouse or a bona fide purchaser without adequate and full consideration (and where decedent retains certain rights) [18-A §2-202(1)]; and (2) the value of spouse's property owned at decedent's death, plus the value of property spouse transferred during marriage to anyone other than decedent which would have been includible in spouse's augmented estate if spouse had predeceased decedent, to the extent the owned or transferred property is derived from decedent by any means other than testate or intestate succession without full consideration [18-A §2-202(2)]. Life or accident insurance, joint annuities, and pensions payable to anyone other than spouse are excluded from the augmented estate [18-A §2-202(1) second paragraph after 1.iv]. |
| Satisfaction of Elective Share: | Values included in the augmented estate which passing to spouse, or which would have passed to the spouse but were renounced, are applied first to satisfy the elective share and to reduce any contributions due from other recipients; spouse's beneficial interest in any life estate or in any trust shall be computed as if worth 1/2 of the total value of the property subject to the life estate or in trust, unless higher or lower values are established by proof [18-A §2-207(A)]; remaining elective share balance equitable apportioned among affected recipients in proportion to the value of their interests therein [18-A §2-207(B)]. |
| Deadline for Election: | Must elect within six months after the probate of decedent's will or within nine months after the date of death, whichever occurs later; provided, however, that non-probate transfers described in §2-202(1) are excluded from the augmented estate for elective share purposes if petition is filed more than nine months after death [18-A §2-205(A)]. |
| Election Procedure / Who Can File?: | Petition must be filed in the court and mailed or delivered to the personal representative, if any [18-A §2-205(A)]. Must be made during spouse's lifetime by spouse, personally, or by order of the court in which protective proceedings for the spouse are pending, after finding that election is necessary to provide adequate support for spouse during probable life expectancy [18-A §2-203(A) and (B)]. |
| Spouse's Right vs. Non-Domiciliary Property | Included in augmented estate if property meets definitions provided for composition of augmented estate in 18-A §2-202. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | The right of a non-domiciliary decedent's spouse to take an elective share of property in Maine is governed by the law of decedent's domicile at death [18-A §2-201]. |
| Waiver / Preclusion of Spouse's Rights: | Spouse's rights of/to elective share, homestead allowance, exempt property, and/or family allowance may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by spouse after fair disclosure. Absent contrary provision, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse is a waiver of all rights to elective share, homestead allowance, exempt property, family allowance, and intestate share, and a renunciation of the provisions of any will executed before the waiver [18-A §2-204]. |

SURVIVING SPOUSE’S RIGHTS TO SHARE IN DECEASED SPOUSE’S ESTATE

MARYLAND

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|--|
| Common Law | Probate-Only | Estates and Trusts Art., Title 3, Sub. 2, Sections 203-208 |

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| Intestacy - Spouse’s Share: | Entire estate if decedent leaves no surviving issue or parent(s); 1/2 of estate if decedent has surviving minor child; \$40,000 plus 1/2 of estate if (a) surviving issue but no minor child of decedent or (b) no surviving issue but surviving parent(s) of decedent [E&T §3-203]. |
| Allowance(s) / Exemption(s): | Spouse entitled to allowance of \$10,000 for personal use, plus \$5,000 for each non-married minor child of decedent [E&T §3-201]; allowance is not in addition to the elective share [E&T §3-203(a)(2)] |
| Elective Share Rights: | Spouse may elect to take a 1/3 share of the “net estate” if decedent has surviving issue, or a 1/2 share of the “net estate” if decedent has no surviving issue, in lieu of provisions under decedent’s will [E&T §3-203]. |
| Property Subject to Elective Share: | <p>“Net estate” means decedent’s property passing by testate succession without reduction for state or federal estate or inheritance taxes, but reduced by (a) funeral and administration expenses, (b) family allowances, and (c) enforceable claims and debts of the estate. Spousal elective share is limited to no more than 1/2 of the “net estate” [E&T §3-203(a)].</p> <p>N.B. In <i>Karsenty v. Schoukroun</i>, 406 Md. 469 (2008), the Maryland Court of Appeals ruled that a decedent-spouse’s lifetime transfers made in frustration of the surviving spouse’s marital rights can be invalidated, in which case the transferred property can be restored to the estate and therefore subject to the elective share.</p> |
| Satisfaction of Elective Share: | Contribution to the payment of elective share is prorated among all legatees [E&T §3-208(b)(1)]. Affected legatees, and not the personal representative, may elect to pay spouse in cash, or other property acceptable to spouse, an amount equal to the fair market value of spouse’s interest in specific property on the date or dates of distribution [E&T §3-208(b)(2)]. Sequestration may apply to natural objects of decedent’s bounty to avoid distortion of intended dispositions [E&T §3-208(b)(3)]. |
| Deadline for Election: | Election must be made within the later of: (a) nine months after date of decedent’s death or (b) six months after the first appointment of personal representative under a will [§3-206(a)(1)]; deadline may be extended by petition filed within initial deadline, and for successive three-month periods thereafter [E&T §3-206(a)(2)]. |
| Election Procedure / Who Can File?: | <p>Election must be in writing, signed by the spouse or other person authorized to make election pursuant to E&T §3-204, and filed with the court in which the personal representative was appointed; form of election provided in statute [E&T §3-207].</p> <p>Right of election is (a) personal to spouse, (b) non-transferrable, and (c) cannot be exercised after spouse’s death; if spouse is minor or under disability, court having jurisdiction over spouse’s person or property may exercise the election by order [E&T §3-204].</p> |
| Spouse’s Right vs. Non-Domiciliary Property | No statutory provision; elective share applies to “property passing by testate succession” under E&T §3-203(a), but Maryland has no settled law regarding application to non-Maryland real property passing under decedent’s will. |
| Spouse’s Right vs. Situs Property of Non-Domiciliary Decedent: | <p>E&T §3-203 does not limit election to spouse of domiciliary decedent; non-domiciliary decedent’s spouse must make the election in accordance with Maryland procedures.</p> <p>N.B. In <i>Bish v. Bish</i>, 181 Md. 621 (1943), spouse of Pennsylvania decedent was allowed a late election in Pennsylvania, but was precluded from making untimely election in Maryland (outside of Maryland deadline); consequently, spouse took Maryland real property under the decedent’s will despite taking elective share in Pennsylvania.</p> |
| Waiver / Preclusion of Spouse’s Rights: | Spouse can waive, before or after marriage, rights of/to elective share, family allowance, right to appointment as personal representative, intestate share, and/or provision under will (if executed before waiver) by written contract, agreement, or waiver [E&T §3-205]. A waiver of “all rights” in property or estate of prospective or present spouse is a waiver of all of the aforesaid rights, unless the instrument provides otherwise [<i>Id.</i>] |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

MASSACHUSETTS

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|--|
| Common Law | Probate-Only* | Part II, Title II, Chapter 191, Section 15 |

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|---|--|
| Intestacy - Spouse's Share: | Entire estate if (a) no descendant or parent of decedent survives, or (b) all of decedent's surviving descendants are common with spouse and spouse has no separate descendants; \$200,000 plus 3/4 of the balance if decedent has surviving parent(s) but no surviving descendant(s); \$100,000 plus 1/2 of the balance if (c) all descendants of decedent are those of spouse, and spouse has one or more separate descendants surviving, or (d) one or more surviving descendants who are not descendants of decedent [190B §2-102]. |
| Allowance(s) / Exemption(s): | Spouse entitled to value, not exceeding \$10,000 in excess of any security interests, in household furniture, automobiles, furnishings, appliances, and personal effects, and discretionary family allowance during the period of administration. Spouse may remain in the house of decedent rent-free for not more than six months after decedent's death [190B §2-403 and 190B §2-404]. |
| Elective Share Rights: | (A) 1/3 of real and personal property of decedent, if decedent has surviving issue; (B) \$25,000 plus 1/2 of remaining personal and real property of decedent, if decedent has surviving kindred but no issue; except that in either case (A or B) spouse would take property in excess of \$25,000, spouse receives in addition only income on the amount in excess (life estate in real property / personal property in trust); (C) \$25,000 plus 1/2 of remaining real and personal property of decedent outright, if decedent has no surviving issue or kindred [191 §15]. |
| Property Subject to Elective Share: | Elective share applies only to personal and real property of decedent [191 §15]. N.B. Under the so-called "Sullivan Rule," property in decedent's revocable trust, if created or amended during marriage and after January 23, 1984, is part of the decedent's estate for elective share purposes; see <i>Sullivan v. Burkin</i> , 460 N.E.2d 572 (1984) and its progeny. |
| Satisfaction of Elective Share: | No statutory provision directing satisfaction of elective share. However, under <i>Crocker v. Crocker</i> , 120 N.E. 110, 111 (1918), the share is paid first from residuary assets before resort to specific legacies unless decedent's will provides for alternative abatement. |
| Deadline for Election: | Spouse must elect within six months after the probate of decedent's will [191 §15]. |
| Election Procedure / Who Can File?: | Spouse must file signed writing waiving provisions for him/her under the will, or claiming the elective share, with the registry of probate [191 §15]. Must be filed during lifetime of spouse, by spouse, personally [191 §15], or may be filed by guardian or conservator with approval of court [see, e.g., <i>Essex Trust Co. v. Averill</i> , 321 Mass. 68 (1947); <i>Old Colony Trust Co. v. Coffman</i> , 342 Mass. 153 (1961)]. |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | No statutory provision; however, see <i>Shannon v. White</i> , 109 Mass. 146 (1872), holding that allowance out of Decedent's personal property is regulated by laws of domicile state. |
| Waiver / Preclusion of Spouse's Rights: | Premarital agreements are authorized regarding prospective spouse's property interests [209 §25]. Marital agreements are enforceable, although subject to heightened scrutiny [see <i>Ansin v. Craven-Ansin</i> , 457 Mass. 283 (2010)]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

MICHIGAN

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|---|
| Common Law | Probate-Only | Ch. 700, Act 386 of 1998, Art. II, Part 2, Sections 2201-2206 |

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|---|--|
| Intestacy - Spouse's Share: | Entire estate if decedent has no surviving parent or descendant; \$150,000 plus 1/2 of the balance if all descendants of decedent are descendants of spouse, and spouse has (a) no separate descendants or (b) one or more separate descendants; \$150,000 plus 3/4 of the balance if decedent has parent(s) surviving but no descendants; \$150,000 plus 1/2 of the balance if one or more, but not all, of decedent's surviving descendants are not descendants of spouse; \$100,000 plus 1/2 of the balance if none of decedent's surviving descendants are descendants of spouse [§700.2102(1)]. Amounts subject to cost of living adjustment [§700.1210]. |
| Allowance(s) / Exemption(s): | Spouse of domiciliary decedent [§700.2401] entitled to: homestead allowance of \$15,000, which is in addition to elective share [§700.2402]; a reasonable family allowance (limited to one year if estate is insolvent) which is not chargeable against elective share [§700.2403] and is capped at \$18,000 (but court can increase upon petition); exempt property, i.e., household furniture, automobiles, furnishings, appliances, and personal effects from the estate up to a value not to exceed \$10,000 [§700.2404]. All preceding amounts are subject to cost of living adjustment [§700.1210]. Spouse of non-domiciliary decedent has rights to homestead allowance, family allowance, and exempt property provided under laws of decedent's domicile at death [§700.2401]. |
| Elective Share Rights: | Spouse of domiciliary decedent may claim elective share of 1/2 the sum or share that would have passed to spouse had decedent died intestate, reduced by 1/2 the value of all property derived by spouse from decedent, by any means other than testate or intestate succession upon decedent's death [§700.2202]. |
| Property Subject to Elective Share: | Property subject to elective share is the same property had Decedent died intestate; see §700.2102. Property derived by spouse from decedent includes a transfer made within two years before decedent's death that is subject to federal gift or estate tax, a transfer made before decedent's death subject to a power retained by decedent that would make the property subject to federal estate tax, or a transfer effectuated through joint ownership, tenancy by the entirety, insurance beneficiary, or similar means [§700.2202]. N.B. Surviving wife's right of dower also available if decedent died before April 6, 2017 (dower abolished by 2016 PA 489). |
| Satisfaction of Elective Share: | No statutory direction for satisfaction of elective share. Note, however, under <i>In re Povey's Estate</i> , 261 N.W. 98-100 (1935), "It is the duty of courts to accomplish as near as may be done equitably the same result between beneficiaries as would have resulted from distribution of the estate in accordance with the terms of the will." Thus, a residuary devise is reduced before a specific devise under abatement principles. |
| Deadline for Election: | Must elect within 63 days after the date for presentment of claims or within 63 days after service of the inventory upon the spouse, whichever is later [§700.2202]. |
| Election Procedure / Who Can File?: | Election must be filed with the court [§700.2202(1) and (2)]. Personal representative required to provide spouse with notice of right of election and deadline for same within 28 days after appointment [§700.3705(5)]. Must be filed during spouse's lifetime [§700.2202(3)] by spouse, personally, or by order of the court in which proceeding as to incapacitated spouse's property is pending [§700.2202(5)]. |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | Spouse of non-domiciliary decedent is entitled to election against the intestate estate or against the will only as may be provided by the law of the place in which decedent was domiciled at time of death [§700.2202]. |
| Waiver / Preclusion of Spouse's Rights: | Spouse's rights of/to elective share, homestead allowance, exempt property, and/or family allowance may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by spouse after fair disclosure. A waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse is a waiver of all rights to elective share, homestead allowance, exempt property, family allowance, and intestate share, and is a renunciation of all benefits otherwise passing to spouse under will executed before the waiver [§700.2205]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

MINNESOTA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|------------------------|--|
| Common Law | Augmented Estate – UPC | Estates of Decedents, Ch. 524, Art. 2, Pt 2, Sect's. 201-215 |

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|---|--|
| Intestacy - Spouse's Share: | Entire estate if decedent has (a) no surviving descendants or (b) descendants who are spouse's descendants and spouse has no separate descendants; \$225,000 plus 1/2 of the balance if (c) all descendants of decedent are those of the spouse, and spouse has one or more separate descendants or (d) one or more descendants of decedent are not descendants of the spouse [§524.2-102]. |
| Allowance(s) / Exemption(s): | Spouse is entitled to the homestead [§524.2-402], exempt property up to \$15,000 [§524.2-403], and a reasonable family allowance for up to one year if the estate is solvent, or 18 months if the estate is solvent [§524.2-404]. Allowances are in addition to, and not charged against, the elective share [§524.2-202(c)]. |
| Elective Share Rights: | Spouse of a domiciliary decedent can take an elective-share amount equal to the value of the elective-share percentage of the augmented estate (up to 50%) determined in accordance with marriage duration vesting schedule [§524.2-202(a)]. Spouse of domiciliary decedent entitled to supplemental elective-share of up to \$75,000 if sum of amounts described in §§ 524.2-207, 524.2-209(a)(1), (b), and (c) are less than \$75,000 [§524.2-202(b)]. |
| Property Subject to Elective Share: | The value of the augmented estate, to the extent provided in §§ 524.2-204, 524.2-205, 524.2-206, and 524.2-207, consists of the sum of the values of all property, whether real or personal, movable or immovable, tangible or intangible, wherever situated, that constitute decedent's net probate estate, decedent's non-probate transfers to others, decedent's non-probate transfers to spouse, and spouse's property and non-probate transfers to others [§524.2-203]. |
| Satisfaction of Elective Share: | The following are applied first to satisfy the elective share amount and to reduce/eliminate contributions from decedent's probate estate and non-probate transfers to others: (a) amounts included in the augmented estate under §524.2-204 passing to spouse by testate or intestate succession and non-probate transfers to spouse under §524.2-206 [§524.2-209(a)(1)]; (b) amounts included in the augmented estate which would have passed to spouse but were disclaimed; and (c) spouse's property and non-probate transfers to others included in the augmented estate up to the applicable percentage under §524.2-202(a) [§524.2-209(a)(3)]. If the foregoing is insufficient, or if spouse is entitled to a supplemental elective share amount, amounts included in decedent's probate estate and in decedent's non-probate transfers to others, <i>other than amounts included under §524.2-205(3)(i) or (iii)</i> , are applied first to satisfy the balance or the supplemental elective, and liability is equitably apportioned among recipients of probate and non-probate transfers [§524.2-209(b)]. If the foregoing is insufficient, balance is paid from remaining portion of decedent's non-probate transfers, and equitably apportioned among the recipients [§524.2-209(c)]. |
| Deadline for Election: | Must elect within nine months after the date of decedent's death, or within six months after probate of decedent's will, whichever occurs later; if petition is filed more than nine months after decedent's death, decedent's non-probate transfers to others are <i>excluded</i> from augmented estate [§524.2-211(a)]. Spouse may within original deadline petition for extension of time to make election, in which case non-probate transfers are <i>not excluded</i> from augmented estate [§524.2-211(b)]. |
| Election Procedure / Who Can File?: | Election must be filed in the court and mailed or delivered to the personal representative, if any [§524.2-211(a)]. Election must be filed during spouse's lifetime by spouse, personally, or by order of court in which protective proceedings for spouse are pending, after finding that exercise is (a) necessary to provide adequate support during probable life expectancy of spouse and (b) consistent with best interests of the natural bounty of spouse's affection [§524.2-212]. If spouse is receiving medical assistance under §256B, personal representative of spouse's estate may exercise the election [§524.2-215(c)], and right may be exercised notwithstanding a <i>marital</i> agreement waiving the right of election (or waiving homestead, exempt property, or family allowance); a valid premarital agreement waiving such rights continues to be effective (to prevent exercise of right or receipt of homestead, exempt property, or family allowance) [§524.2-215(f)]. |
| Spouse's Right vs. Non-Domiciliary Property | Included in the augmented estate under §524.2-203. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | The right, if any, of a spouse of a non-domiciliary decedent to take an elective share in property in Michigan is governed by the law of the decedent's domicile at death [§524.2-202(d)]. |

SURVIVING SPOUSE’S RIGHTS TO SHARE IN DECEASED SPOUSE’S ESTATE

MINNESOTA, continued

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| Waiver / Preclusion of Spouse’s Rights: | Spouse’s right of/to election, homestead, exempt property, and/or family allowance, may be waived, wholly or partially, after marriage, by a written contract, agreement, or waiver signed by waiving party after fair disclosure. Waiver of “all rights,” or equivalent language, in the property or estate of a spouse is a waiver <i>only of the right to the elective share</i> . Any waiver prior to marriage must be made pursuant to §519.11 [§524.2-213]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

MISSISSIPPI

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|---------------------------------|
| Common Law | Probate-Only | Title 91, Chapter 5, Section 25 |

| | |
|---|--|
| Intestacy - Spouse's Share: | Entire estate if decedent has no surviving children or descendants; spouse receives child's share if decedent has surviving children or descendants [§91-1-7]. |
| Allowance(s) / Exemption(s): | Spouse (and children decedent supported) entitled to one year's support, amount of which is determined by court-appointed appraisers, including such provision as may be embraced in the exempt property set apart [§91-7-135]. Spouse (and children decedent supported) entitled to exempt property, to be set apart by appraisers [§91-7-117]. |
| Elective Share Rights: | Spouse may renounce will that does not make satisfactory provision for spouse, and instead take a "legal share" of decedent's estate, which is the spouse's intestate share; except that, even if decedent has no surviving child or descendant, spouse's share is limited to 1/2 of decedent's real and personal estate [§91-5-25]. However, spouse precluded from taking elective share if spouse has separate property equal in value to the elective share, but may elect to take the difference if spouse's separate property is less than elective share [§91-5-29]. |
| Property Subject to Elective Share: | Property subject to the elective share is any real and personal estate to which spouse would have been entitled had decedent died intestate [§91-5-25]. |
| Satisfaction of Elective Share: | Elective share determined by court-appointed commissioners, who must follow rule in §91-5-29 for allocating decedent's real and personal property to spouse's elective share. Rule: if spouse has a separate estate that is only 2/3 of the elective share, then spouse is entitled to 1/3 of decedent's realty and 1/3 of the personalty; if spouse's separate estate is 1/2 of elective share, spouse receives 1/2 of decedent's realty and 1/2 of the personalty, etc. [§91-5-29]. |
| Deadline for Election: | Must renounce within 90 days after the probate of decedent's will [§91-5-25]. |
| Election Procedure / Who Can File?: | Renunciation must be filed in the office where will was probated; sample language provided in statute [§91-5-25]. Spouse, or guardian of incompetent spouse, must elect during spouse's lifetime [see, e.g., <i>Wolcott v. Wolcott</i> , 184 So.2d 381 (1966); <i>Estate of Mullins</i> , 125 So.2d 93 (1960)]. |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | All personal property in Mississippi passes according to Mississippi laws, regardless of (a) marital rights which may have accrued in other states, (b) decedent being domiciled elsewhere state, or (c) whether heirs or persons entitled to distribution are domiciled in Mississippi. Spouse's share in decedent's personal estate determined under Mississippi law [§91-1-1] |
| Waiver / Preclusion of Spouse's Rights: | Premarital and marital agreements are enforceable as any other contract, provided the terms are fair and there is adequate disclosure [see <i>Smith v. Smith</i> , 656 So.2d 1143 (1995) (premarital agreements) and <i>Roberts v. Roberts</i> , 381 So.2d 133 (1980) citing to <i>Kirby v. Kent</i> , 172 Miss. 457 (1935) (marital agreements)]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

MISSOURI

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|--|
| Common Law | Semi-Augmented | Title 31, Ch. 474, Taking Against Will, Sections 160-230 |

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| Intestacy - Spouse's Share: | Entire estate if decedent has no surviving issue; \$20,000 plus 1/2 of the balance if decedent has surviving issue, all of whom are issue of spouse; 1/2 of estate if decedent has one or more surviving issue who are not issue of spouse [§474.010(1)]. |
| Allowance(s) / Exemption(s): | Spouse is entitled to: exempt property (items of tangible personal property) set forth in §474.250; one year's support allowance payable in lump sum or periodically [474.260]; and a homestead allowance not exceeding 50% of the value of the estate (excluding exempt property and year's support), but not more than \$15,000. The homestead allowance is an offset against the elective share, if taken [§474.160.2]. |
| Elective Share Rights: | Electing spouse shall receive 1/2 of decedent's estate, subject to payment of claims, if decedent has no lineal descendants; spouse shall receive 1/3 of the estate if decedent has surviving lineal descendants [§474.160]. |
| Property Subject to Elective Share: | <p>The estate consists of all money and property owned by decedent at death, reduced by funeral and administration expenses, exempt property, family allowance, and enforceable claims, and increased by the aggregate value of all money and property derived by spouse from decedent by any means other than testate or intestate succession, including exempt property and allowance, without full consideration [§474.163.1].</p> <p>Property derived from the decedent includes without limitation: (1) spouse's beneficial interest in a trust created by decedent during lifetime; (2) property appointed to spouse by decedent's exercise of power of appointment that is also exercisable in favor of other persons; (3) proceeds of policy insuring decedent's life attributable to decedent's premium payments (which include premiums paid by decedent's employer, partner, or partnership, or creditors); (4) lump-sum or commuted value of annuity payments (or proceeds) under which decedent was primary annuitant and attributable to decedent's premium payments; (5) commuted value of pension and retirement benefits (other than Social Security) attributable to decedent's services or disability; and (6) spouse's share resulting from decedent's community property rights in any other state [§474.163.2].</p> |
| Satisfaction of Elective Share: | Elective share is satisfied by application of abatement principles under §474.620 and §474.623. |
| Deadline for Election: | Must elect within 10 days after the expiration of the time limited for contesting decedent's will [§474.180]; will contest deadline is six months after date of probate, or six months after first publication of notice, whichever is later [§473.083.1]. |
| Election Procedure / Who Can File?: | <p>Election must be in writing and filed in the office of the clerk of the court; sample language is provided in the statute [§474.190].</p> <p>Election must be made during spouse's lifetime by spouse, personally, or spouse's guardian ad litem or conservator (with approval of the court) [§474.200 and §474.190].</p> |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision; however, decedent's community property located in another state included in "property derived from the decedent" for purposes of elective share valuation [§474.163.2(6)]. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | Rights of spouse to elect against non-resident decedent's will, and method of election, are unaffected by Missouri Code [§473.675(1)(b)]. |
| Waiver / Preclusion of Spouse's Rights: | Spouse's right of election may be waived before or after marriage by a written contract, agreement, or waiver signed by the waiving party, after full disclosure, and for fair consideration under all the circumstances. The written contract, agreement, or waiver may be filed with the court [§474.220]; statute has been construed to include waiver of exempt property, family allowance, and/or homestead allowance [see <i>Roberts v. Estate of Roberts</i> , 664 S.W.2d 634 (1984)]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

MONTANA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|------------------------|---|
| Common Law | Augmented Estate – UPC | Title 72, Chapter 2, Part 2, Sections 221-230 |

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| Intestacy - Spouse's Share: | Entire estate if decedent (a) has no descendant or parent surviving, or (b) has descendants surviving, all of whom are descendants of spouse, and spouse has no separate descendants; \$200,000 plus 3/4 of the balance if decedent has surviving parent(s) but no surviving descendants; \$150,000 plus 1/2 of the balance if all decedent's surviving descendants are those of spouse and spouse has one or more separate descendants surviving; \$100,000 plus 1/2 of the balance if one or more surviving descendants of decedent are not those of surviving spouse [§72-2-112(1) through (4)]. |
| Allowance(s) / Exemption(s): | Spouse entitled to the following: homestead allowance of \$20,000; exempt property, value not exceeding \$10,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects; a reasonable monetary allowance for maintenance during the period of administration, or up to one year if the estate is insolvent [§72-2-412 through 414]. |
| Elective Share Rights: | Spouse of domiciliary decedent has the right to an elective share amount equal to (a) the value of the elective share percentage of the augmented estate, ranging from 3% to 50%, determined under marriage duration vesting schedule [§72-2-221(1)]; or, (b) a supplemental elective share amount equal to \$50,000 less (i) spouse's property and non-probate transfers to others (§72-2-222(2)(d)), (ii) decedent's probate and non-probate transfers to spouse including property spouse disclaimed (§72-2-227(1)(a) through (c)), and (ii) the elective share amount payable from decedent's probate and non-probate transfers to others under §72-2-227(2) [§72-2-221(2)]. |
| Property Subject to Elective Share: | The value of decedent's augmented estate includes (a) decedent's probate estate, reduced by funeral and administrative expenses, allowance, exempt property, and claims, (b) the value of decedent's non-probate transfers to others, whether real or personal, movable or immovable, wherever situated, not included in decedent's probate estate, (c) decedent's non-probate transfers to spouse, and (d) spouse's property owned at decedent's death [§72-2-222(2)]. |
| Satisfaction of Elective Share: | The following are applied first to satisfy the elective share amount and to reduce/eliminate contributions from decedent's probate estate and non-probate transfers to others: (a) amounts included in the augmented estate passing to spouse by testate or intestate succession and non-probate transfers to spouse under §72-2-222(2)(a) or (c); (b) amounts included in the augmented estate which would have passed to spouse but were disclaimed; and (c) spouse's property and non-probate transfers to others included in the augmented estate up to the applicable percentage under §72-2-221(1) [§72-2-227(1)(a) through (d)]. If the foregoing is insufficient, or if spouse is entitled to a supplemental elective share amount, amounts included in decedent's probate estate and in decedent's non-probate transfers to others, <i>other than amounts included under §72-2-222(2)(b)(iii)(A) or (B)</i> , are applied first to satisfy the balance or the supplemental elective, and liability is equitably apportioned among recipients of probate and non-probate transfers [§72-2-227(2)]. If the foregoing is insufficient, balance is paid from remaining portion of decedent's non-probate transfers, and equitably apportioned among the recipients [§72-2-227(3)]. |
| Deadline for Election: | Must elect within six months after the date of decedent's death, or within six months after probate of decedent's will, whichever occurs later [§72-2-225]. |
| Election Procedure / Who Can File?: | Petition for election must be filed in the court and mailed or delivered to the personal representative, if any; additional time can be obtained via petition filed before deadline [§72-2-225(1) and (2)]. Petition must be filed during spouse's lifetime by spouse, or spouse's conservator, guardian, or attorney-in-fact [§72-2-223(1)]. |
| Spouse's Right vs. Non-Domiciliary Property | Included in the augmented estate under §72-2-222. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | The right, if any, of a non-domiciliary decedent's spouse to take an elective share in Montana property is governed by the law of decedent's domicile at death [§72-2-221]. |
| Waiver / Preclusion of Spouse's Rights: | Spouse's rights of/to elective share, homestead allowance, exempt property, and/or family allowance may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver (with or without consideration) signed by the spouse; waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse is a waiver of all rights to elective share, homestead allowance, exempt property, family allowance, and intestate share, and is a renunciation of all benefits otherwise passing to spouse under will executed before the waiver [§72-2-224(1) and (4)]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

NEBRASKA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|---|--|--|
| Common Law | Augmented Estate – UPC | Chapter 30, Article 23, Part 2, Sections 2313-2319 |
| Intestacy - Spouse's Share: | Entire estate if decedent has no surviving issue or parent; \$100,000 plus 1/2 of the balance if decedent has (a) surviving parent(s) but no issue of (b) surviving issue all of whom are those of the spouse; 1/2 of the estate if decedent has surviving issue, one or more of whom are not those of the spouse [§30-2302]. | |
| Allowance(s) / Exemption(s): | Spouse of a domiciliary decedent is entitled to: (a) a homestead allowance of \$20,000; (b) exempt property up to \$12,500 in excess of any security interests therein; and, (c) a reasonable allowance in money out of the estate for maintenance during the period of administration, or up to one year if estate is insolvent [§§30-2322 through 2324]; all of the foregoing are subtracted in determining the augmented estate [§30-2314(a)]. Spouse is entitled to the foregoing whether or not an elective share is taken [§30-2318(b)]. | |
| Elective Share Rights: | Spouse of domiciliary decedent may take an elective share in any fraction not in excess of 1/2 of decedent's augmented estate [§30-2313(a)]. | |
| Property Subject to Elective Share: | <p>The augmented estate is the estate, first, reduced by the funeral and administration expenses, homestead allowance, family allowances, exemptions, and enforceable claims and, second, increased by the aggregate amount of the following: (a) the value of property transferred by decedent (with certain retained rights or interests) at any time during marriage to or for the benefit of any person other than a bona fide purchaser or spouse, but only to the extent above \$3,000 in the aggregate for transfers made within three years of death [§30-2314(a)(1)]; (b) the value of property owned by spouse at death of decedent or transferred by spouse during marriage to anyone other than decedent [§30-2314(a)(2)].</p> <p>The following property is <i>excluded</i> from the augmented estate: accident or life insurance proceeds, joint annuity, or pension payable to anyone other than spouse; non-probate transfers to anyone other than spouse, if petition for elective share is not filed or delivered before the nine month deadline [§30-2314(c)].</p> | |
| Satisfaction of Elective Share: | The elective share is satisfied first by property which is part of the augmented estate passing to spouse by testate or intestate succession or other means and which has not been renounced, to reduce amount due from other recipients of the augmented estate [§30-2319(a)]. If the foregoing is insufficient, then remaining property of the augmented estate is so applied that liability for the balance is equitably apportioned among recipients of the augmented estate, on a proportional basis [§30-2319(b)]. Spouse's election does not affect spouse's share of property passing via testate or intestate succession unless spouse also renounces such share in the elective share petition [§30-2318(a)]. | |
| Deadline for Election: | Must elect within nine months after the date of decedent's death or within six months after the probate of decedent's will, whichever occurs later; non-probate transfers omitted from augmented estate if petition filed later than one year after death; extension may be given for cause if requested before deadline (but extension, if granted, does not appear to override exclusion of non-probate transfers) [§30-2317(a)]. | |
| Election Procedure / Who Can File?: | <p>Petition for elective share must be filed in the court and mailed or delivered to the personal representative, if any, designating the fraction (not exceeding 1/2) [§30-2317(a)].</p> <p>Election may be exercised only during spouse's lifetime by spouse, personally, or if spouse is a protected person, by order of the court in which protective proceedings as to spouse's property are pending, after finding that exercise is in the best interests of (a) spouse during spouse's probable life expectancy and (b) children, family members, or other successors to the decedent or spouse, with due regard to the other assets and resources of the spouse, the extent and nature of any related estate planning of decedent and the spouse, the financial impact upon the decedent's estate, the spouse or spouse's estate, and tax considerations [§30-2315].</p> | |
| Spouse's Right vs. Non-Domiciliary Property | Property situated outside of Nebraska appears to be excluded from the augmented estate under the definition of "estate" in §30-2209(12), when read in conjunction with §30-2314 (augmented estate). N.B. Where a will was executed and property located in another state, law of that state will determine the disposition of Decedent's property. <i>Powell v. American Charter Fed. Sav. & Loan Ass'n</i> , 514 N.W.2d 326 (1994) [§30-2210]. | |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | The right, if any, of a non-domiciliary decedent's spouse to take an elective share of property in Nebraska and the amount or extent of such share are governed by the law of decedent's domicile at death [§30-2313(b)]. | |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

| NEBRASKA, continued | |
|--|---|
| Waiver / Preclusion of Spouse's Rights: | Spouse's rights to/of elective share, homestead allowance, exempt property, and/or family allowance may be waived, wholly or partially, before or after marriage, by written contract, agreement, or waiver signed by spouse; waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse is a waiver of all rights to elective share, homestead allowance, exempt property, family allowance, and intestate share, and is a renunciation of all benefits otherwise passing to spouse under will executed before the waiver [§30-2316(a) and (d)]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

NEVADA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|--------------------|---------------------|---------------------------------|
| Community Property | N/A | |

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|---|---|
| Intestacy - Spouse's Share: | 1/2 of estate if decedent has only one child or issue of one child; 1/3 if decedent has two or more children surviving, or child and issue of deceased child [§134.040]; 1/2 of estate if decedent has parent(s) but no issue surviving; 1/2 of separate property if decedent has no surviving parent or issue; all separate property if decedent has no surviving issue, parent, sibling [§134.050]. |
| Allowance(s) / Exemption(s): | Spouse is entitled to remain in possession of the homestead, wearing apparel, and provisions in the possession of the family, and all household furniture, and is also entitled to a reasonable provision for support, in court's discretion. The court may set apart for the spouse all exempt personal property and shall set apart the homestead. If the exempt property set apart is insufficient for the spouse's support, the court may make reasonable allowance out of the estate as necessary for the family's maintenance according to their circumstances during the progress of the estate administration, which, in case of an insolvent estate, may not be longer than one year after granting letters of administration [§146.010 through §146.030]. |
| Elective Share Rights: | N/A; no quasi-community property provision. |
| Property Subject to Elective Share: | N/A |
| Satisfaction of Elective Share: | N/A |
| Deadline for Election: | N/A |
| Election Procedure / Who Can File?: | N/A |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | No statutory provision. |
| Waiver / Preclusion of Spouse's Rights: | Premarital agreements respecting rights and obligations in property, disposition of property upon death, making of a will, trust, or other arrangements to carry out agreement, ownership/disposition of life insurance death benefit, and any other matter not in violation of public policy are permitted [§123A.050]. Also see §134.005, which provides that provisions of Chapter 134, Succession, do not apply to the extent inconsistent with provisions of a premarital agreement which is enforceable under §123A. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

NEW HAMPSHIRE

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|---|
| Common Law | Probate-Only | Title LVI, Ch. 560, Shs. of Real and Personal Est., Sec. 10 |

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|---|---|
| Intestacy - Spouse's Share: | Entire estate if decedent has no surviving issue or parent; \$250,000 plus 1/2 of the balance if decedent (a) has surviving issue who are issue of the spouse, and spouse has no other surviving issue, or (b) has surviving parent but no surviving issue; \$150,000 plus 1/2 of the balance if decedent has surviving issue who are issue of the spouse, and spouse has separate surviving issue; \$100,000 plus 1/2 of the balance if decedent has surviving issue one or more of whom are not issue of the spouse [561:1]. |
| Allowance(s) / Exemption(s): | Spouse entitled to exempt property (personal effects – considered apart from estate) [§554:4 and §554:5], homestead up to \$120,000 [480:1], and a reasonable support allowance out of the personal estate, which is part of spouse's elective share, if taken [560:1]. Spouse entitled to remain in residence up to forty days rent free [560:2]. |
| Elective Share Rights: | Value of the elective share is one of the following: (a) 1/3 of the personal and real property if decedent had children surviving; (b) \$10,000 of personal property and \$10,000 of real property, plus 1/2 of the remainder above those amounts if decedent has no surviving children but has surviving parent or sibling; or (c) \$10,000 plus \$2,000 for each full year of marriage, plus 1/2 in value of the remainder of real and personal property if decedent leaves no surviving issue, parent, or sibling [560:10]. N.B. Elective share requires waiver of homestead right under 480:1 [560:10]. |
| Property Subject to Elective Share: | Decedent's real and personal property are subject to the elective share [560:§10]. N.B. Under <i>Hanke v. Hanke</i> , 459 A.2d 246 (1983), rights of a surviving spouse are defeated by decedent's <i>inter vivos</i> transfer of property to a trust, even if the decedent retained and exercised absolute control over the transferred property during lifetime, <i>unless the transfer was made with the purpose of depriving the surviving spouse of rights</i> . |
| Satisfaction of Elective Share: | No statutory direction for satisfaction of elective share. |
| Deadline for Election: | Waiver or release of the will and homestead right must be filed within six months after the appointment of an executor or administrator, and not afterwards, unless by permission of the judge of probate for good cause shown [560:14]. |
| Election Procedure / Who Can File?: | Waiver or release of the will and homestead right must be made in writing and filed in the probate office; if real estate is involved, waiver and release must be recorded in the registry of deeds of county where real estate is situated [560:14]. Spouse, personally, or guardian (authorized to waive provisions of a will and to release homestead right under 464-A:34. |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | No statutory provision. |
| Waiver / Preclusion of Spouse's Rights: | Parties, before marriage may contract with respect to homestead right and/or distributive share, or either of them, [560:15]. Premarital agreements authorized under 460:2-a. Guardian of person has the same rights as ward to waive provisions of a will and to release homestead right [464-A:34] |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

NEW JERSEY

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|------------------------------------|
| Common Law | Semi-Augmented | Title 3B, Chapter 8, Sections 1-19 |

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|---|---|
| Intestacy - Spouse's Share: | Entire estate if (a) decedent has no surviving descendant or parent or (b) all of decedent's surviving descendants are those of the spouse and spouse has no separate descendants surviving; first 25% of estate, but not less than \$50,000 or more than \$200,000, plus 3/4 of the balance if decedent has surviving parent(s) but no surviving descendant(s); first 25% of estate, but not less than \$50,000 or more than \$200,000, plus 1/2 of the balance if (c) all of decedent's surviving descendants are descendants of the spouse and spouse has one or more separate descendants surviving, or (d) one or more of decedent's surviving descendants is not a descendant of the spouse [§3B:5-3]. |
| Allowance(s) / Exemption(s): | If a will contest proceeding is pending, spouse may apply to Superior Court for a support and maintenance allowance payable from estate income, and a further allowance from estate principal or income to meet expenses incurred in conduct of the will contest [§3B:3-30]. Spouse also entitled to exempt personal property up to \$5,000 in value [§3B:16-5]. |
| Elective Share Rights: | Spouse of domiciliary decedent has right of election to take an elective share of 1/3 of decedent's "augmented estate" [§3B:8-1]. |
| Property Subject to Elective Share: | The "augmented estate" means decedent's gross estate, <i>reduced</i> by funeral and administrative expenses and enforceable claims, <i>increased</i> by the value of property decedent transferred, while retaining certain rights/interests, during marriage to or for the benefit of any person other than spouse without adequate and full consideration [§3B:8-3]. Augmented estate <i>includes</i> (1) spouse's separate property owned at time of decedent's death, and derived from decedent at death via non-probate transfer [§3B:8-6]; the following without limitation: interest in trust created by decedent; property acquired via power of appointment if also exercisable in favor of non-spouse appointees; life insurance proceeds if decedent (or his/her employer) paid premiums; lump sum annuity proceeds if decedent (or his/her employer) paid premiums; retirement, pension, and disability payments; and spouse's share of community property [§3B:8-7]. Augmented estate <i>excludes</i> life or accident insurance, joint annuity, or pension payable to anyone other than spouse [§3B:8-5]. |
| Satisfaction of Elective Share: | Elective share is satisfied by applying value of spouse's separate property, property received by reason of decedent's death (including disclaimed property), and non-probate transfers of decedent's property received by spouse; if the foregoing is insufficient, then liability for elective share is apportioned equitably among recipients of augmented estate [§3B:8-18]. |
| Deadline for Election: | Complaint must be filed within six months after appointment of personal representative; deadline can be extended for good cause [§3B:8-12]. The surviving spouse or domestic partner may elect to take his elective share in the augmented estate by filing a complaint in the Superior Court within 6 months after the appointment of a personal representative of the decedent's estate. The court may, before the time for election has expired and upon good cause shown by the surviving spouse or domestic partner, extend the time for election upon notice to persons interested in the estate and to distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share [§3B:8-12]. |
| Election Procedure / Who Can File?: | Complaint to take elective share must be filed in the Superior Court [§3B:8-12]. Spouse's right of election must be exercised during spouse's lifetime by spouse, personally, or spouse's court-appointed guardian only by order of the court after finding that the election is necessary to provide adequate support to spouse during spouse's probable life expectancy [§3B:8-11]. |
| Spouse's Right vs. Non-Domiciliary Property | Included in the augmented estate; see, e.g., <i>In re Estate of Peck</i> , 59 A.3d 608 (2012), where decedent's assets located in Thailand were included in augmented estate for elective share purposes under §3B:8-1, because location of property in a foreign country was of no significance in determining augmented estate. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | Right of spouse of non-domiciliary decedent to take an elective share in property in New Jersey is governed by the law of the decedent's domicile at death [§3B:8-2]. |
| Waiver / Preclusion of Spouse's Rights: | Spouse's elective share and other rights may be waived, wholly or partially, before or after marriage by a written contract, agreement, or waiver, signed by the spouse waiving after fair disclosure. Waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse is a waiver of all rights to an elective share and a renunciation of all benefits otherwise passing to spouse by intestate succession or under will executed before the waiver [§3B:8-10]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

NEW MEXICO

| Property Regime | Elective Share Type | Elective Share Statute Location |
|--------------------|---------------------|---------------------------------|
| Community Property | N/A | |

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|---|--|
| Intestacy - Spouse's Share: | <p><u>Separate Property</u>: entire estate if decedent has no surviving issue; 1/4 of estate if decedent has surviving issue [§45-2-102(A)].</p> <p><u>Community Property</u>: decedent's 1/2 of community property subject to testamentary disposition [§45-2-102(B)].</p> |
| Allowance(s) / Exemption(s): | Spouse entitled to family allowance of \$30,000, plus exempt personal property up to \$15,000 value [§45-2-402 and -403]. |
| Elective Share Rights: | <p>N/A. Quasi-community property under §40-3-8(C) treated as community property in event of divorce or legal separation; however, New Mexico code <i>does not address quasi-community property upon death</i> of spouse.</p> <p>N.B. Spouse may be entitled to intestate share if decedent signed will prior to marriage as to portion of decedent's estate, if any, that is not devised to decedent's child born before marriage and who is not child of spouse, or descendant of such child [§45-2-301].</p> |
| Property Subject to Elective Share: | N/A. See §45-2-301(B) for satisfaction of intestate share of omitted spouse (discussed above). |
| Satisfaction of Elective Share: | N/A. See §45-2-301(B) for satisfaction of intestate share of omitted spouse (discussed above). |
| Deadline for Election: | N/A |
| Election Procedure / Who Can File?: | N/A |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | No statutory provision. |
| Waiver / Preclusion of Spouse's Rights: | Spouse's rights to family allowance and/or exempt property may be waived, wholly or partially, before or after marriage by written contract, agreement, or waiver signed by spouse [§45-2-407]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

NEW YORK

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|---|
| Common Law | Semi-Augmented | Estates, Powers and Trusts Law, Article 5, Part 1, Sections 1-4 |

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|---|--|
| Intestacy - Spouse's Share: | Entire estate if decedent has no surviving issue; \$50,000 and 1/2 of residue if decedent has surviving issue [EPTL §4-1.1]. |
| Allowance(s) / Exemption(s): | Spouse entitled to categories of exempt property, set forth in statute, none of which is considered to be part of the decedent's estate, as follow: (1) household items and tangible personal property (including jewelry if not disposed of in will) not exceeding \$20,000 in value; (2) religious books, pictures, and assorted media not exceeding \$2,500 in value; (3) domestic and farm animals with their necessary food for 60 days, and certain farm equipment not exceeding \$20,000 in value; (4) one automobile not exceeding \$25,000 in value; checking, savings, cash, cash equivalents, and marketable securities not exceeding \$25,000 in value, reduced by the excess value, if any, of items in the foregoing categories (1) through (4) [EPTL §5-3.1]. Homestead exemption, subject to value limitations listed in statute, continues after owner's death in favor of spouse [CPLR §5206]. |
| Elective Share Rights: | Spouse has a right of election to take a share of decedent's estate, determined as follows: a pecuniary amount equal to the greater of (a) \$50,000 or, if the capital value of the net estate is less than \$50,000, such capital value, or (b) 1/3 of decedent's net estate [EPTL §5-1.1-A(a)(2)]. ¹ "Net estate" is computed after deduction for debts, administration expenses, and reasonable funeral expenses [EPTL §5-1.1-A(a)(2)]. |
| Property Subject to Elective Share: | Decedent's "net estate" includes the value of dispositions under decedent's will, via intestacy [under EPTL §4-1.1], and testamentary substitutes under EPTL §5-1.1-A(b)(1), which include: (A) gifts causa mortis; (B) outright gifts made in the last year of decedent's life, (C) Totten Trusts; (D) jointly-owned accounts with pay-on-death / transfer-on-death features; (E) joint tenancy or tenancy by the entirety property; (F) revocable trusts; (G) retirement, pension, and similar accounts; and (H) property over which decedent had a presently exercisable general power of appointment, <i>reduced by</i> debts, administration and reasonable funeral expenses, but not reduced by estate taxes [EPTL §5-1.1-A(a)(2)]. |
| Satisfaction of Elective Share: | Elective share is satisfied by affected parties, <i>pro rata</i> , and may be satisfied in cash or specific property, or combination thereof, in the discretion of the affected party [EPTL §5-1.1-A(c)(2)]. N.B. Under EPTL §5-1.1-A(a)(4), spouse's elective share is satisfied with property or interests that pass "absolutely from decedent to such spouse;" accordingly, interests in trusts do not satisfy the "net elective share" amount. "Net elective share" is spouse's elective share less (a) interests passing absolutely to spouse or (b) interests that would have passed absolutely to spouse but were disclaimed EPTL §5-1.1-A(4)]. |
| Deadline for Election: | Election must be made within six months from the date of issuance of letters testamentary or administration, but in no event later than two years after death of decedent [EPTL §5-1.1-A(d)(1)]; deadline may be extended for up to six months [EPTL §5-1.1-A(d)(2)] upon application; default due to failure to elect or apply for extension may be cured upon filing of petition showing reasonable cause [<i>Id.</i>]. |
| Election Procedure / Who Can File?: | Written notice of election must be served upon personal representative, executor in will on file with surrogate's court, and filed with the surrogate's court in which letters were issued [EPTL §5-1.1-A(d)(1)]. Election can be filed by spouse, or, with court approval, by any of the following: spouse's guardian, committee of incompetent spouse, conservator, guardian ad litem, or guardian under Art. 81 of NY mental hygiene law [EPTL §5-1.1-A(c)(3)]. |
| Spouse's Right vs. Non-Domiciliary Property | Included in the "net estate" under EPTL §5-1.1-A(c)(7). |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | Right of election is unavailable to spouse of non-domiciliary decedent unless decedent elected, pursuant to EPTL §3-5-1(h), to have the disposition of his/her property situated in New York to be governed under New York law [EPTL §5-1.1-A(c)(6)]. Also see <i>In re Estate of Rhoades</i> , 607 NYS 2d 893 (1994). |
| Waiver / Preclusion of Spouse's Rights: | Spouses may waive or release a right of election; a waiver or release of all rights in the estate of the other spouse is a waiver or release of a right of election [EPTL §5-1.1-A(e)(1)]. |

¹ Applies to decedents dying after September 1, 1992.

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

NORTH CAROLINA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|--|
| Common Law | Semi-Augmented | Chapter 30, Article 1A, Sections 3.1-3.6 |

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|---|--|
| Intestacy - Spouse's Share: | <p>Real Property: all real property if decedent has no surviving lineal descendant or parent; 1/2 interest in real property if decedent survived by (a) only one child or lineal descendant(s) of only one deceased child, or (b) parent(s) but no lineal descendant; 1/3 interest in real property if decedent survived by two or more children, or lineal descendants of two or more deceased children [§29-14(a)].</p> <p>Personal Property: all personal property if decedent has no surviving lineal descendant or parent; \$60,000, plus 1/2 of any balance of personal property if decedent survived by only one child or lineal descendant of only one deceased child; \$60,000, plus 1/3 of any balance of personal property if decedent survived by two or more children, or lineal descendants of two or more children; \$100,000 plus 1/2 of any balance of personal property if decedent has no surviving lineal descendant but is survived by parent(s) [§29-14(b)].</p> |
| Allowance(s) / Exemption(s): | Spouse entitled to allowance of one year's support in the amount of \$30,000, regardless of whether elective share claimed, out of decedent's personal property, unless spouse waived right in a valid agreement [§30-15]. |
| Elective Share Rights: | Spouse of domiciliary decedent can claim an "elective share" ranging between 15% - 50% of "Total Net Assets" (defined under §30-3.2(4)), determined under the marriage duration vesting schedule in §30-3.1(a), less the value of "Net Property Passing to Surviving Spouse" (defined in §30-3.2(2c)) [§30-3.1(a)]. |
| Property Subject to Elective Share: | "Total Net Assets" is the sum of (A) (i) property that would pass by intestate succession if decedent died without a will; (ii) property over which decedent held a general power of appointment; (iii) property in a revocable trust; (iv) property in a trust over which decedent had unrestricted right of withdrawal; (v) pay/transfer on death deposit accounts; (vi) pay/transfer on death securities accounts; (vii) 1/2 of property held as tenants by the entirety or with spouse jointly and with right of survivorship; (viii) retirement benefits and deferred compensation; (ix) life insurance on decedent if decedent could designate beneficiary; and (x) certain retained interest property, <i>reduced by</i> (B) one year's allowances to persons other than spouse, and enforceable claims [§30-3.2]. |
| Satisfaction of Elective Share: | <p>The personal representative recovers the elective share amount payable from non-spousal assets in the following manner: liability is satisfied first from intestate property, allocated to heirs proportionately; if intestate property is insufficient, elective share is satisfied from non-spousal residuary estate, allocated proportionately among residuary legatees; if residue is insufficient, share is satisfied from other property passing under the will pro rata among legatees [§30-3.5(a2)].</p> <p>Expenses (including attorneys' fees) incurred by personal representative, spouse, or other responsible persons in connection with elective share proceedings shall be equitably apportioned by the court clerk, in clerk's discretion, among the parties [§30-3.4(h)].</p> |
| Deadline for Election: | Must elect within six months after the issuance of letters of testamentary or letters of administration in connection with the will or intestate proceeding [§30-3.4(b)]. |
| Election Procedure / Who Can File?: | <p>Petition must be (a) filed with the clerk of superior court of the county in which primary administration of decedent's estate lies and (b) mailed or delivered to personal representative [§30-3.4(b)].</p> <p>Election must be exercised during spouse's lifetime by spouse, personally, or spouse's attorney-in-fact (if power of attorney expressly provides authority to do so or to engage in estate transactions), or – with court approval – by spouse's guardian; if spouse exercises election but dies before claim is settled, spouse's personal representative succeeds to spouse's elective share rights [§30-3.4(a)].</p> |
| Spouse's Right vs. Non-Domiciliary Property | "Total Assets" and "Total Net Assets," as defined under §30-3.4(3f) and (4), respectively, are not limited to North Carolina-situs property; presumably non-domicile property (or the value thereof) is included in the elective share. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | Elective share claim is available only to the spouse of North Carolina domiciliary decedent [§30-3.1(a)]. If spouse, but not decedent, is a resident of North Carolina, spouse may claim year's support allowance from decedent's property in North Carolina [see <i>Jones v. Layne</i> , 57 S.E. 372 (1907)]. |
| Waiver / Preclusion of Spouse's Rights: | Spouse's elective share right may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the spouse, by the spouse's attorney-in-fact if the surviving spouse's power of attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, or, with approval of court, by the guardian of the surviving spouse's estate or general guardian [§30-3.6]. Premarital and marital agreements are authorized under §52-10. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

NORTH DAKOTA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|---|--|--|
| Common Law | Augmented Estate – UPC | Title 30.1, Article II, Chapter 05, Sections 01-08 |
| Intestacy - Spouse's Share: | Entire estate if (a) decedent has no surviving descendant or parent or (b) all of decedent's surviving descendants are descendants of spouse and spouse has no separate descendants; \$300,000 plus 3/4 of the balance if decedent has surviving parent(s) but no surviving descendant; \$225,000 plus 1/2 of the balance if decedent's surviving descendants are descendants of the spouse and spouse has separate surviving descendant(s); \$150,000 plus 1/2 of the balance if one or more of decedent's surviving descendants are not descendants of the spouse [§30.1-04-02]. | |
| Allowance(s) / Exemption(s): | Spouse is entitled to the following: homestead allowance up to \$100,000 [§47-18-01]; exempt property up to \$15,000 [§30.1-07-01]; and a reasonable allowance for maintenance during administration, or up to one year if the estate is insolvent [§30.1-07-02], all without regard to the elective share [§30.1-05-01(3)]. | |
| Elective Share Rights: | Spouse of domiciliary decedent may take an elective share of 50% of the augmented estate [§30.1-05-01(1)]. If amount is less than \$75,000, spouse is entitled to a supplemental elective-share amount equal to \$75,000 minus the sum of the amounts described in those sections [§30.1-05-01]. | |
| Property Subject to Elective Share: | The augmented estate consists of the sum of the values of (a) decedent's probate estate (reduced by funeral and administration expenses, allowances, and enforceable claims), (b) decedent's non-probate transfers to others (moveable or immovable and wherever situated); (c) decedent's non-probate transfers to spouse; (d) spouse's separate property owned at decedent's death or passing to spouse at decedent's death [§30.1-05-02(2)]. | |
| Satisfaction of Elective Share: | The following are applied first to satisfy the elective-share amount: amounts passing to spouse via testate or intestate succession and non-probate transfers [§30.1-05-03(1)(a)]; spouse's separate property and non-probate transfers to others [§30.1-05-03(1)(b)]. If the foregoing is insufficient, amounts included in probate estate and non-probate transfers to others, <i>other than amounts included under §30.1-05-02(2)(3)(a) or (b)</i> , are applied first to satisfy the balance or the supplemental elective-share amount, and liability is equitably apportioned among recipients of probate estate and non-probate transfers [§30.1-05-03(2)]. If the foregoing is insufficient, balance is paid from remaining portion of decedent's non-probate transfers, and equitably apportioned among the recipients [§30.1-05-03(3)]. | |
| Deadline for Election: | Election must be made within nine months after the date of decedent's death, or within six months after the probate of decedent's will, whichever limitation later expires [§30.1-05-05(1)]; if petition is filed more than nine months after decedent's death, decedent's non-probate transfers to others are excluded from the augmented estate [Id.]; provided, however, that spouse may petition for an extension of time to make the election within nine months of decedent's death, in which case decedent's non-probate transfers to others are not excluded from the augmented state if spouse elects within the extended deadline [§30.1-05-05(2)]. | |
| Election Procedure / Who Can File?: | Petition to take elective share must be filed in the court and mailed or delivered to the personal representative, if any, [§30.1-05-05(1)]. Petition for election must be filed when spouse is living, by spouse, personally, or spouse's conservator, guardian, or attorney-in-fact [§30.1-05-06(1)]. If election is exercised on behalf of incapacitated spouse, elective share is set aside in trust for the spouse's benefit [§30.1-05-05(2)]. | |
| Spouse's Right vs. Non-Domiciliary Property | Included in the augmented estate under §30.1-05-02. | |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | Spouse's right, if any, to take an elective share of non-domiciliary decedent's North Dakota property is governed by the law of decedent's domicile at death [§30.1-05-01(4)]. | |
| Waiver / Preclusion of Spouse's Rights: | Premarital and marital agreements are authorized under §14-03.2-06 regarding, <i>inter alia</i> , waiver of marital rights or obligations upon the death of a spouse [§14-03.2-01(2)]. | |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

OHIO

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|--|
| Common Law | Probate-Only | Title 21, Chapter 2106, Election, Sections 01-11 |

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|---|---|
| Intestacy - Spouse's Share: | Entire estate if (a) decedent has one or more surviving descendants, all of whom are also descendants of spouse, or (b) decedent has no surviving descendants; \$20,000 plus 1/2 of the balance if spouse has one surviving child or descendants of only child and spouse is not natural or adoptive parent of such child. If decedent has more than one child or descendants of child and either (a) spouse is natural or adoptive parent of one but not all children of decedent, then \$60,000 plus 1/3 of the balance, or (b) spouse is not the natural or adoptive parent of any child of decedent, then \$20,000 plus 1/3 of the balance [§2105.06]. |
| Allowance(s) / Exemption(s): | Spouse can elect to receive the decedent's interest in the "mansion house," and may reside there free of charge for one year, unless sold within that time for the payment of decedent's debts, in which case spouse receives rental value for unexpired term [§2106.15]. Spouse entitled to support allowance of \$40,000 in money or property [§2106.13], and one or more automobiles (if not passing at death via title or if not bequeathed specifically under will) of aggregate value less than \$65,000. If spouse selects one or more automobiles under §2106.18, the support allowance is reduced by the value of the automobile having the lowest value, if more than one automobile is so selected [§2106.13]. Spouse entitled to dower, a 1/3 life estate in real property of the decedent held during marriage, but cannot receive dower interest if elective share is taken [§2103.02]. |
| Elective Share Rights: | Value of the elective share is equal to 1/2 of the net estate, unless two or more of decedent's children or their lineal descendants survive, in which case the elective share is 1/3 of the net estate; spouse's share determined before payment of death taxes subject to apportionment [§2106.01(C)]. |
| Property Subject to Elective Share: | Decedent's "net estate" is that portion of the estate remaining after satisfaction of all decedent's indebtedness and the obligations of the estate. (<i>Weeks v. Vandever</i> , 233 N.E.2d 502 (1968)). Also see annotations to §2105.06 (Statute of descent and distribution under intestacy). |
| Satisfaction of Elective Share: | No statutory direction for satisfaction of elective share. |
| Deadline for Election: | Must elect within five months after the date of the initial appointment of an administrator or executor to the estate; court may extend the deadline upon motion filed within the deadline and for good cause shown [§2106.01(E)]. |
| Election Procedure / Who Can File?: | After appointment of administrator or executor, court issues citation [described in §2106.02(A)] to spouse to elect whether to take the elective share [§2106.01(A)]. Spouse must make election to take intestate share under §2106.06 in person before the probate judge, or a deputy clerk who has been appointed as referee, except where court makes election on behalf of disabled spouse pursuant to §2106.07 and §2106.08 [§2106.06]. Spouse must make election in person [§2106.06]; provided, however, where application has been filed on behalf of disabled spouse and court has directed suitable person to (a) ascertain value of spouse's rights to decedent's estate and (b) issue a report of same, the probate court can make the election on spouse's behalf based on the report [§2106.07 and §2106.08]. |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | Under <i>Pfau v. Moseley</i> (222 N.E. 2d 639, 648 (1966)), spouse of non-domiciliary decedent has right to take a dower interest under Ohio law as to real property located in Ohio. |
| Waiver / Preclusion of Spouse's Rights: | Premarital agreements authorized under §2106.22; spouse's rights to elective share [<i>Rocker v. Rocker</i> , 232 N.E.2d 445 (1967)] retirement benefits [<i>Kinkle v. Kinkle</i> , 699 N.E.2d 41 (1998)] and other provisions at death can be waived [see, generally, annotations to §2106.22]. |
| Miscellaneous: | Ohio retains dower (curtesy abolished §2103.09) rights, which applies to spouse regardless of spouse's sex [§2106.02]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

OKLAHOMA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|---|
| Common Law | Probate-Only | Title 84, Chapter 2, Capacity and Power, Section 44 |

| | |
|---|--|
| Intestacy - Spouse's Share: | Entire estate if decedent has no surviving issue, parent, or sibling; all property acquired "by joint industry during coverture" (referred to hereinafter as "marital property") and 1/3 of remaining property if decedent has surviving parent or sibling but no surviving issue; 1/2 of the estate if decedent has surviving issue who are also issue of spouse; 1/2 of all marital property and equal (child's) share of remaining property if decedent has surviving issue one or more of whom are not issue of spouse [84 §213(B)]; plus decedent's automobile (choice of one if decedent had more than one automobile) [84 §232]. |
| Allowance(s) / Exemption(s): | Spouse may continue to possess and occupy the homestead [58 §311] (which is exempt from administration proceedings), and shall receive the following exempt property (exempt from administration proceedings): (a) family pictures; (b) a pew or other house of worship seating; (c) burial ground lots; (d) family bible and books not exceeding \$100 in value; (e) decedent's clothing; (f) provision for one year's supply, either provided or growing, and fuel; and (g) all household furniture (all exempt from debts and claims) [58 §311 and §312]. Spouse also entitled to support allowance for one year if the foregoing is insufficient [58 §314]. |
| Elective Share Rights: | Spouse has right of election to take a 1/2 interest in property acquired by "joint industry of the husband and wife during coverture" [84 §44.B.1 and 2]. ² |
| Property Subject to Elective Share: | "Property acquired by the joint industry of the husband and wife during coverture" [84 §44.B.1]. Property not subject to "testamentary disposition" (e.g., IRA) is excluded from the elective share claim [<i>Wellshear v. Mellor (In re Estate of Wellshear)</i> , 142 P.3d 994 (2006)]. Decedent's revocable trust property is subject to spouse's elective share, if such property is "joint industry during coverture property" and decedent has an interest surviving death [<i>Littleton v. Littleton (In re Estate of Littleton)</i> , 313 P.3d 1062, 167 (2013), citing <i>Thomas v. Bank of Okla., N.A.</i> , 684 P.2d 553 (1984) which applied prior version of 84 §44 but may also apply to current statute.] |
| Satisfaction of Elective Share: | No statutory direction for satisfaction of elective share. |
| Deadline for Election: | Election must be made on or before the final date for hearing of the petition for final distribution of the estate [§84-44.B.3]. |
| Election Procedure / Who Can File?: | Election to take statutory share must be made in a writing, filed in the district court in which the estate is being administered [84 §44.B.3]. Election must be exercised during spouse's lifetime by spouse, personally, or by spouse's court-appointed guardian or conservator with approval of court having jurisdiction over guardian or conservator [84 §44.B.4]. |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision; however, language in 84 §44.B does not limit share to situs property. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | No statutory provision. But, see <i>Estate of Miller v. Miller</i> , 768 P.2d 373 (1988), where spouse of non-domiciliary decedent elected to take share of decedent's Oklahoma property against will probated in Texas (decedent's domicile at death). |
| Waiver / Preclusion of Spouse's Rights: | Will is subservient to any written premarital agreement [84 §44.B.1]. Marital agreements are not authorized by statute and are invalid and unenforceable [<i>Atkinson v. Barr</i> , 1967 OK 103 (1967)]. |

² Provisions under 84 §44(B) apply to decedents dying after July 1, 1985; 84 §44(A) applies to decedents who died before that date.

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

OREGON

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|--|
| Common Law | Semi-Augmented | Title 12, Ch. 114, Elective Share for Decedents Who Die on or after Jan. 1, 2011, Sections 600-725 |

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|---|---|
| Intestacy - Spouse's Share: | Entire estate if decedent has no surviving issue [§112.025(1)]; 1/2 of the estate if decedent has surviving issue who is/are not issue of the spouse [§112.025(2)]. |
| Allowance(s) / Exemption(s): | Spouse may occupy the dwelling until one year after death, or until one year after termination of decedent's life estate in the dwelling [114.005]. Spouse may petition for support allowance, awardable after notice and hearing, [§114.015] which is subject to modification or termination in court's discretion [§114.045] and limitations if estate will be insolvent [§114.065]; pending hearing on aforementioned support allowance, court may award temporary support to spouse in an amount and of a nature reasonably necessary for the welfare of spouse [§114.035]. |
| Elective Share Rights: | Spouse of domiciliary decedent may take an elective share [§114.600(1)], the value of which is a dollar amount equal to a fixed percentage (between 5% and 33%) of the augmented estate [defined in §114.630] based on a marriage duration vesting schedule [§114.605(1) and (2)] and after reduction for all enforceable claims [§114.630(2)]. |
| Property Subject to Elective Share: | Augmented estate consists of the following property, whether real or personal, movable or immovable, tangible or intangible, wherever situated [§114.630(1)]: (a) decedent's probate estate (described in §114.650), (b) decedent's non-probate estate (described in §114.660 and §114.665), (c) spouse's estate (described in §114.675). ³ |
| Satisfaction of Elective Share: | Elective share is satisfied first from spouse's estate to reduce/eliminate contributions from others [§114.700(1)]; if spouse's estate is insufficient, elective share is satisfied with property from decedent's (a) probate and (b) non-probate estate [§114.700(2)], with the recipients bearing liability from such property based on their relative interests, unless decedent's will/trust instrument(s) provide otherwise [§114.700(3)]. |
| Deadline for Election: | Election must be made within nine months after the decedent's death [§114.610]. |
| Election Procedure / Who Can File?: | If no probate proceeding is pending, spouse must file petition for appointment of personal representative and a motion for exercise of the election [§114.610(1)(a)]; if probate proceeding is pending, spouse must file a motion [§114.610(1)(b)] or petition in circuit court [§114.720(1)] to exercise election within the [§114.610(1)(b)], and must serve same on all interested parties [see §114.610(1)(b) and §114.720(1)]. Motion or petition must be filed in either county or circuit court, depending on jurisdiction [§111.055]. Elective share may be claimed by spouse, personally, or by spouse's conservator, guardian, or attorney-in-fact [§114.625]. If spouse dies before payment of elective share, spouse's personal representative may secure the payment [§114.600(1)]. |
| Spouse's Right vs. Non-Domiciliary Property | Included in the augmented estate [§114.630(1)]. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | The right, if any, of non-domiciliary decedent's spouse to take an elective share of property in Oregon is governed by the law of decedent's domicile at death [§114.600(3)]. |
| Waiver / Preclusion of Spouse's Rights: | Spouse's right of election may be waived, wholly or partially, before or after marriage, by written contract, agreement, or waiver signed by spouse [§114.620(1)]. Absent contrary provision, a written agreement that waives all rights in the property or estate of a present or prospective spouse, using the phrase "all rights" or other equivalent language, is a waiver of all rights to an elective share, and a renunciation of benefits otherwise passing to spouse by intestate succession or under a will executed before the agreement or waiver [§114.620(2)]. |

³ Effective January 1, 2018, reference to "inheritance tax" removed from §114.630(2); provision is otherwise unchanged. Other changes to various statutes in the elective share subchapter appear not to affect the spouse's substantive elective share rights or procedures for making the election.

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

PENNSYLVANIA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|--|
| Common Law | Semi-Augmented | Penn. Consolidated Stat., Title 20, Ch. 22, Sections 01-11 |

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|---|--|
| Intestacy - Spouse's Share: | Entire estate if decedent has no surviving issue or parent; \$30,000 plus 1/2 of the balance if (a) decedent has surviving parent but no surviving issue, or (b) decedent has surviving issue who are issue of spouse; 1/2 of the estate if decedent has issue who are not issue of spouse; in case of partial intestacy, property spouse receives under will satisfies <i>pro tanto</i> the \$30,000 allowance [§2102]. |
| Allowance(s) / Exemption(s): | Spouse may claim an exemption for real and/or personal property of decedent up to \$3,500 in value; provided that specifically bequeathed or devised property may not be claimed if other property is available [§3121]. |
| Elective Share Rights: | Spouse of domiciliary decedent entitled to an elective share of 1/3 of the decedent's estate and certain non-probate property (see Property Subject to Elective Share, below, items (2) through (6)) [§2203(a)]. |
| Property Subject to Elective Share: | <p>Property subject to election: (1) decedent's property passing by will or intestacy; (2) income or use for the remaining life of the spouse of property conveyed by decedent during the marriage to the extent that decedent, at time of death, had the use of the property or an interest in or power to withdraw the income thereof; (3) property conveyed by decedent during his lifetime to the extent that decedent, at time of death, had a power to revoke the conveyance or to consume, invade, or dispose of the principal for decedent's benefit; (4) property conveyed by decedent during the marriage to decedent and another/others with right of survivorship to the extent of any interest in the property that decedent had unilateral power, at time of death, to convey; (5) survivorship rights conveyed to beneficiary of an annuity contract to the extent it was purchased by decedent during the marriage and decedent was receiving annuity payments at time of death; and, (6) property conveyed by decedent during the marriage and within one year of death to the extent that the aggregate amount conveyed to each donee exceeds \$3,000 at time of conveyance [§2203].</p> <p>Property excluded from the elective share includes proceeds of insurance on life of the decedent, interest in pension, profit sharing, stock bonus, deferred compensation, or other employer-provided benefits, and property passing pursuant to decedent's exercise or non-exercise of a power of appointment [§2203(b)].</p> |
| Satisfaction of Elective Share: | Elective share is satisfied first from property which otherwise would pass to spouse by intestacy; balance of the elective share is charged separately against each conveyance subject to the election, with adjustments as necessary to effectuate decedent's testamentary intent notwithstanding the election [§2211(b)(1)]. |
| Deadline for Election: | Must elect within six months after (a) decedent's death or (b) after the date of probate, whichever occurs later; court may extend time for election, in its discretion, upon spouse's application filed before the aforementioned time limit [§2210(b)]. |
| Election Procedure / Who Can File?: | <p>Election must be in a signed writing filed with the clerk of the orphans' court division of the county where decedent was domiciled at death; notice of election must be given to personal representative, if any [§2210(a)]. Costs of filing and recording election are reimbursed out of the estate as an administration expense [§2210(c)].</p> <p>Election must be exercised during spouse's lifetime by spouse, personally, or by attorney-in-fact (under §5603(d) or guardian upon order of court determining that exercise is advisable [§2206].</p> |
| Spouse's Right vs. Non-Domiciliary Property | Spouse's election applies to all property, regardless of situs [§2211(a)]. Orders, decrees, or judgments issued in the county of Decedent's domicile may be further enforced by suits in other courts [§2211(c)]. Domiciliary court may restrain any payment or transfer of property subject to election [§2211(d)]. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | Rights, if any, of non-domiciliary decedent's spouse to an elective share in Pennsylvania-situs property are governed by the laws of the decedent's domicile at death, but such rights are subject to the rights of fiduciaries, custodians, and obligors within Pennsylvania, transferees for value, and holders of liens for value on real estate or tangible personal property located in Pennsylvania under §2211 (relating to determination of effect of election; enforcement) [§2202]. |
| Waiver / Preclusion of Spouse's Rights: | Spouse's right of election may be waived, wholly or partially, before or after (a) marriage or (b) death of the decedent [§2207]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

RHODE ISLAND

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|------------------------------------|
| Common Law | Probate-Only | Title 33, Chapter 28, Sections 1-4 |

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| Intestacy - Spouse's Share: | If decedent has no surviving issue, spouse takes life estate in real property [§33-1-5] and from decedent's personal estate, \$50,000 plus 1/2 of the surplus personal estate [§33-1-10(1)]. If decedent has surviving issue, spouse takes 1/2 of decedent's surplus personal estate [§33-1-10(2)]. Spouse may petition for discretionary real estate allowance not exceeding \$150,000 in value [§33-1-6]. (<i>see Satisfaction of Elective Share, below, for detailed descriptions of intestate provisions for spouse.</i>) |
| Allowance(s) / Exemption(s): | Spouse entitled to exempt property, including furniture, furnishings, household effects, and supplies [§33-10-1], which, although inventoried, are excluded from the probate estate [§33-10-2]. Spouse also entitled to reasonable support allowance from the estate until the support is otherwise provided, but for period not exceeding six months from the date of decedent's death, but court may, in its discretion, allow an additional six-month support allowance unless the final account has been allowed; real estate may be sold to provide for the allowance [§33-10-3]. If decedent has no surviving issue, the court shall set off for the spouse the decedent's real estate not required to pay debts, and as may be suitable for the spouse's situation and support, in a life estate for the spouse under provisions of §33-25-2 [§33-10-4]. Allowances are not charged against the elective share, but are in addition thereto [§33-28-1(b)]. |
| Elective Share Rights: | Spouse of domiciliary decedent has a right to take an elective share equal to the (a) life estate and allowance of an intestate's real estate pursuant to §§ 33-1-5 and §33-1-6, and (b) share of an intestate's personal estate pursuant to §33-1-10, which share may be taken in kind or in value [§33-28-1(a)]. |
| Property Subject to Elective Share: | Decedent's real estate and personal estate |
| Satisfaction of Elective Share: | <p><u>Real Estate:</u> Decedent's real estate descends and passes to spouse in a life estate (see §33-1-5).</p> <p><u>Real Estate Allowance:</u> Court may, in its discretion and upon petition filed within six months from date of first publication of notice of administrator's qualification, set off to the spouse a fee in decedent's real estate in an amount not in excess of \$150,000; parcel may be sold to satisfy this allowance [see §33-1-6].</p> <p><u>Personal Estate:</u> Surplus of decedent's personal estate (a) not bequeathed and (b) after payment of debts, funeral expenses, and administration expenses, distributable to spouse as follows: \$50,000 plus 1/2 of the surplus balance if decedent has no surviving issue; or 1/2 of the surplus if decedent has surviving issue.</p> |
| Deadline for Election: | Must elect within six months after the date of first publication of the qualifications of the decedent's fiduciary [§33-28-4(a)]; spouse may, within the initial deadline, petition for an extension of time to make the election not to exceed nine months after decedent's death [§33-28-4(b)]. |
| Election Procedure / Who Can File?: | <p>Petition to renounce devises and bequests under decedent's will and to take elective share must be filed in the probate court, and, in the case of real estate in a city or town other than the decedent's domicile, filed in the records of deeds where the real estate is situated [§33-28-4].</p> <p>Right of election must be exercised during spouse's lifetime by spouse, personally, or by the spouse's conservator, guardian, or attorney-in-fact [§33-28-2(a)].</p> |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | Right, if any, of a non-domiciliary decedent's spouse to take an elective share in property in Rhode Island is governed by the law of the decedent's domicile at death [§33-28-1(c)]. |
| Waiver / Preclusion of Spouse's Rights: | Spouse's right of/to election and allowances under chapter 10 (see above) may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the spouse, which is enforceable without consideration [§33-28-3(a)]. Unless otherwise provided in the instrument, a waiver of "all rights" or equivalent language in the property or estate of a present or prospective spouse is a waiver of all rights to elective share and allowances under chapter 10 and a renunciation of all benefits that would otherwise pass to that spouse by intestate succession or under a will executed before the waiver [§33-28-3(d)]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

SOUTH CAROLINA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|---|
| Common Law | Probate-Only* | Title 62, Article 2, Part 2, Sections 01-07 |

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|---|--|
| Intestacy - Spouse's Share: | Entire estate if decedent has no surviving issue; 1/2 of the estate if decedent has surviving issue [§62-2-102]. |
| Allowance(s) / Exemption(s): | Spouse is entitled from the estate to a value not exceeding \$25,000 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects; other estate assets are available to spouse if value of such property is below \$25,000; this allowance is in addition to any right of homestead and personal property exemption otherwise granted by law, but are chargeable against and not in addition to any benefit or share passing to spouse under decedent's will, unless otherwise provided by intestate succession, or by the elective share [§62-2-401]. |
| Elective Share Rights: | Spouse of domiciliary decedent has a right of election to take an elective share of 1/3 of decedent's "probate estate" as computed under §62-2-202 [§62-2-201(a)]. |
| Property Subject to Elective Share: | <p>Decedent's "probate estate" consists of property passing under decedent's will, plus decedent's property passing by intestacy, reduced by funeral and administration expenses and enforceable claims [§62-2-202(a)]. Revocable inter vivos trust property is excluded from the "probate estate" unless such trust is found to be illusory [§62-2-202(b)].</p> <p>* Assets in decedent's revocable inter vivos trust, if trust is found to be illusory for purposes of determining spouse's elective share rights, are included as part of the "probate estate" for purposes of calculating the elective share; any property (including a beneficial interest) passing to spouse from an illusory revocable inter vivos trust, is applied first toward satisfaction of the elective share [§62-7-401(c)].</p> <p>Spouse's beneficial interest in property that qualifies for the estate tax marital deduction under IRC §2056 is computed at its full value, without regard to whether the marital deduction election was made [§62-2-207(c)].</p> |
| Satisfaction of Elective Share: | The elective share is satisfied first by property (including beneficial interests) passing to spouse, or that would have passed to spouse but were disclaimed, before contributions are due from other recipients of probate estate property, provided such property passes to spouse in any of the following ways: under will, via intestacy, by homestead allowance, exempt property, beneficiary designation of life insurance or retirement benefits, testamentary trust, or revocable inter vivos trust [§62-2-207(a)]. Beneficial interests passing in trust for the benefit of spouse count toward satisfaction of spouse's elective share [§62-2-207(b)], and are computed at full value (see above). Decedent's probate estate property is applied so that liability for balance of elective share is satisfied from probate estate via abatement in accordance with §62-3-902 [§62-2-207(d)]. |
| Deadline for Election: | Must elect within the later of (1) eight months after date of decedent's death, (2) six months after informal or formal probate of decedent's will, or (3) thirty days after spouse is served with a summons and petition to set aside informal probate or to modify or vacate an order for formal probate [§62-2-205(a)]. |
| Election Procedure / Who Can File?: | <p>Summons and petition for elective share must be filed in the court and served upon the personal representative, if any [§62-2-205(a)]</p> <p>Right of election spouse may be exercised only during spouse's lifetime by spouse, personally, or by spouse's duly appointed attorney-in-fact; if spouse is a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to spouse's property are pending [§62-2-203].</p> |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | The right, if any, of non-domiciliary decedent's spouse to take an elective share of property in South Carolina is governed by the law of decedent's domicile at death [§62-2-201(b)]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

| SOUTH CAROLINA, continued | |
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| Waiver / Preclusion of Spouse's Rights: | Spouse's rights to an elective share, homestead allowance, and/or exempt property may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the spouse after fair and reasonable disclosures of decedent's property and financial obligations [§62-2-204(A)]. Absent contrary provision, a waiver of all rights in the property or estate of a present or prospective spouse is a waiver of all rights to elective share, homestead allowance, and exempt property and a disclaimer of all benefits which would otherwise pass by intestate succession or under provisions of a will executed before the waiver [§62-2-204(B)]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

SOUTH DAKOTA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|------------------------|--|
| Common Law | Augmented Estate – UPC | Title 29A, Chapter 2, Part 2, Sections 201-214 |

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| Intestacy - Spouse's Share: | Entire estate if (a) decedent has no surviving descendant or (b) all of decedent's surviving descendants are descendants of the spouse; \$100,000 plus 1/2 of any balance if one or more of decedent's surviving descendants are not descendants of the spouse [§29A-2-102]. |
| Allowance(s) / Exemption(s): | Spouse is entitled to a homestead allowance as provided in §43-31-1 <i>et seq.</i> [§29A-2-401], and to the exempt property and cash described in §43-45-1 <i>et seq.</i> [§29A-2-402], both of which are in addition to any share passing to spouse by decedent's will, intestate succession, or the elective share. In addition spouse entitled to a reasonable family allowance in money from the estate for maintenance during the period of administration, not exceeding \$18,000 [§29A-2-403]. |
| Elective Share Rights: | Spouse of a domiciliary decedent may take an elective share amount equal to the value of either (a) a fixed percentage (up to 50%) of the augmented estate based on a marriage duration vesting schedule, or, (b) a supplemental elective share amount equal to \$50,000 less amounts passing from the augmented estate to the spouse under §29A-2-207 (spouse's property) and §29A-2-209(a)(1) (property passing to spouse by testate or intestate succession), plus elective share amount payable from decedent's probate and non-probate transfers to others under §29A-2-209(b) and (c), if the sum of the foregoing is less than \$50,000 [§29A-2-202(a) and (b)]. |
| Property Subject to Elective Share: | Decedent's augmented estate consists of the sum of the values of all property, whether real or personal, movable or immovable, tangible or intangible, wherever situated, that constitute (a) decedent's "net probate estate," (b) decedent's non-probate transfers to others, (c) decedent's non-probate transfers to spouse, and (d) spouse's property and non-probate transfers to others [§29A-2-203]. Decedent's "net probate estate" is the probate estate after reduction for funeral and administration expenses, homestead and family allowances, exempt property, and enforceable claims [§29A-2-204]. |
| Satisfaction of Elective Share: | The following are applied first to satisfy the elective share amount and to reduce/eliminate contributions from decedent's probate estate and non-probate transfers to others: (1) amounts included in the augmented estate passing to spouse by testate or intestate succession under §29A-2-204 and non-probate transfers to spouse under §29A-2-206; (2) amounts included in the augmented estate which would have passed to spouse but were disclaimed; and (3) spouse's property and non-probate transfers to others included in the augmented estate up to the applicable percentage under §29A-2-202(a) [§29A-2-209(a)]. If the foregoing is insufficient, or if spouse is entitled to a supplemental elective share amount, amounts included in decedent's probate estate and in decedent's non-probate transfers to others, <i>other than amounts included under §29A-2-205(3)(i) or (iii)</i> , are applied first to satisfy the balance or the supplemental elective, and liability is equitably apportioned among recipients of probate and non-probate transfers [§29A-2-209(b)]. If the foregoing is insufficient, balance is paid from remaining portion of decedent's non-probate transfers, and equitably apportioned among the recipients [§29A-2-209(c)]. |
| Deadline for Election: | Must elect within the later of nine months after the date of decedent's death, or within four months after the admission of the will to informal or formal probate; if election is filed more than nine months after decedent's death or beyond the extended deadline, then decedent's non-probate transfers to others are excluded from the augmented estate in computing the elective share [§29A-2-211(a)]. Court may grant extension of time to make the election upon filing of a petition within nine months after decedent's death, for good cause [§29A-2-211(b)]. |
| Election Procedure / Who Can File?: | Petition for the elective share must be filed in the court and mailed or delivered to the personal representative, if any [§29A-2-211(a)]. The right of election may be exercised by spouse, personally, or by spouse's conservator or attorney-in-fact, or, if the spouse dies prior to the expiration of the time for making an election under §29A-2-211, by the surviving spouse's personal representative [§29A-2-212]. |
| Spouse's Right vs. Non-Domiciliary Property | Included in the augmented estate [§29A-2-203]. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | The right, if any, of the surviving spouse of a non-domiciliary decedent to take an elective share in property in South Dakota is governed by the law of the decedent's domicile at death [§29A-2-202(d)]. |

SURVIVING SPOUSE’S RIGHTS TO SHARE IN DECEASED SPOUSE’S ESTATE

| SOUTH DAKOTA, continued | |
|--|---|
| Waiver / Preclusion of Spouse’s Rights: | Spouse’s right of/to elective share, homestead allowance, exempt property, and/or family allowance may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the spouse [29A-2-213(a)]. Absent contrary provision, a waiver of “all rights,” or equivalent language, in the property or estate of a present or prospective spouse is a waiver of all rights of elective share, homestead allowance, exempt property, and family allowance and a renunciation of all benefits otherwise passing to spouse by intestate succession or under any will executed before the waiver [29A-2-213(d)]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

TENNESSEE

| Property Regime | Elective Share Type | Elective Share Statute Location |
|---|--|---------------------------------------|
| Common Law | Probate-Only | Title 31, Chapter 4, Sections 101-105 |
| Intestacy - Spouse's Share: | Entire estate if decedent has no surviving issue; greater of 1/3 of the estate or child's share, if decedent has surviving issue [§31-2-104(a)]. | |
| Allowance(s) / Exemption(s): | Spouse of intestate decedent, or spouse who elects against will, is entitled to (a) exempt personal property and personal motor vehicle having value, collectively, not in excess of \$50,000 [§30-2-101(a)]; a reasonable allowance in money from the estate for maintenance during the period of one year after decedent's death, according to spouse's previous standard of living, taking into account the condition of decedent's estate [§30-2-102]. Spouse entitled to homestead exemption, which is a life estate of \$5,000 in the homestead; if homestead cannot be set apart and therefore is sold spouse entitled to \$5,000 from proceeds [§30-2-201 et seq. and §31-1-104(a)]. | |
| Elective Share Rights: | Spouse of an intestate decedent electing against an intestate share, or a spouse electing against decedent's will, has a right to take an elective share amount equal to the value of decedent's "net estate," determined under a marriage duration vesting schedule (between 10% and 40%) [§31-4-101(a)(1)]. | |
| Property Subject to Elective Share: | Decedent's "net estate" includes all real and personal property subject to disposition under decedent's will or the laws of intestate succession, reduced by (a) secured debts, (b) funeral and administration expenses, an award of (c) exempt property, (d) homestead allowance, and (e) year's support allowance. Decedent's "net estate" excludes any property over which decedent held a power of appointment, whether or not exercised, unless decedent exercises such power to direct the assets to be paid to the personal representative for administration as part of decedent's probate estate [§31-4-101(b)]. | |
| Satisfaction of Elective Share: | Spouse's elective share amount is payable from decedent's estate, after reduction for the value of assets included in decedent's gross estate that were transferred, or deemed transferred, to or for the benefit of spouse, but excluding the homestead, exempt property, and year's support allowances; life estate or trust interest for spouse is determined on actuarial basis [§31-4-101(c)]. Recipients who have received property from decedent's estate may be liable for contribution toward satisfaction of spouse's elective share to the extent of distributions received [§31-4-102(d)]. | |
| Deadline for Election: | Election must be made within nine months after decedent's date of death [§31-4-102(a)(1)]; if litigation is pending regarding title to property devised / bequeathed by will, spouse has an additional year from the date of probate within which to make the election [§31-4-102(a)(2)]. If spouse is mentally incompetent or under age 18 when will is admitted to probate, petition alleging election is in spouse's best interest must be filed within one year from probate, or within any extension granted [§31-4-104]. | |
| Election Procedure / Who Can File?: | Election must be filed in the court and mailed or delivered to the personal representative, if any [§31-4-102(a)(1)]. If spouse is adjudged mentally incompetent, or if spouse is under age 18, when decedent's will is admitted to probate, guardian, conservator, or next friend may make the election; court may appoint guardian ad litem to determine whether election is in the spouse's interests [§31-4-104]. If spouse dies before deadline for making the election, spouse's personal representative may make the election on spouse's behalf [§31-4-105]. | |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision. | |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | No statutory provision. | |
| Waiver / Preclusion of Spouse's Rights: | Premarital agreements concerning property prospective spouses own are authorized under §36-3-501; marital agreements enforceable, but subject to scrutiny, under <i>Bratton v. Bratton</i> , 136 S.W.3d 595, 600 (2004). | |
| Miscellaneous: | Tennessee law permits the creation of a community property trust which, among other things, may provide for full basis adjustment for community property upon the predeceasing spouse's death under IRC § 1014 [see §35-17-101 <i>et seq.</i>]. | |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

TEXAS

| Property Regime | Elective Share Type | Elective Share Statute Location |
|--------------------|---------------------|---------------------------------|
| Community Property | N/A | |

| | |
|---|--|
| Intestacy - Spouse's Share: | <p><u>Separate Estate (non-community property)</u>: all of the personal estate and real estate if decedent has no surviving descendant, parent, sibling, or any sibling's descendants [§201.002(d)]; all of the personal estate (other than community property) and 1/2 of real estate if decedent has no surviving descendant but has a parent, sibling, or sibling's descendant surviving §201.002(c); 1/3 of the personal estate and a life estate in real property if decedent has surviving descendant [§201.002(b)].</p> <p><u>Community Estate (community property)</u>: all if (a) decedent has no surviving descendant or (b) decedent's surviving descendants are descendants of the spouse [§201.003(b)]; 1/2 of community property if decedent survived by descendant who is not descendant of the spouse [§201.003(c)].</p> |
| Allowance(s) / Exemption(s): | Spouse entitled to the following allowances: homestead [§353.051(a)(1)] or allowance in lieu thereof up to \$45,000 [§353.053(b)] both of which are exempt from unsecured debts, exempt personal property described in §42.002(a) [§353.051] an allowance in lieu of exempt property up to \$30,000 [§353.053(b)], and family allowance for one year payable from decedent's estate [§353.102]. |
| Elective Share Rights: | <p>N/A; no quasi-community property.</p> <p>See <i>Estate of Hanau v. Hanau</i>, 730 S.W.2d 663 (1987), wherein Texas Supreme Court declined to apply quasi-community property principles to separate property of deceased spouse, notwithstanding decision under <i>Cameron v. Cameron</i>, 641 S.W.2d 210 (1982) in which Court treated separate property as quasi-community property at divorce.</p> |
| Property Subject to Elective Share: | N/A |
| Satisfaction of Elective Share: | N/A |
| Deadline for Election: | N/A |
| Election Procedure / Who Can File?: | N/A |
| Spouse's Right vs. Non-Domiciliary Property | N/A |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | N/A |
| Waiver / Preclusion of Spouse's Rights: | Premarital agreements concerning rights and obligations of prospective spouses to property of the other are authorized under Family Code §4.002. Marital property agreements are authorized pursuant to Family Code §4.101 <i>et seq.</i> |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

UTAH

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|------------------------|---|
| Common Law | Augmented Estate – UPC | Title 75, Chapter 2, Part 2, Sections 201-214 |

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|---|--|
| Intestacy - Spouse's Share: | Entire estate if (a) decedent has no surviving descendants or (b) all of decedent's surviving descendants are descendants of the spouse; \$75,000 plus 1/2 of any balance if decedent has one or more surviving descendant who are not descendants of the spouse [§75-2-102(1)]; any non-probate transfers from intestate decedent to spouse are added to probate estate in determining shares and are treated as advancements against spouse's intestate share [§75-2-102(2)]. |
| Allowance(s) / Exemption(s): | Spouse of domiciliary decedent is entitled to: (a) homestead allowance of \$22,500 [§75-2-402]; (b) exempt property to a value not exceeding \$15,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects; and (c) a reasonable maintenance allowance during the period of administration, for up to one year if the estate is insolvent [§75-2-404(1)]. All allowances are chargeable against elective share [see §75-2-402, §75-2-403, and §75-2-404(2)]. |
| Elective Share Rights: | Spouse of a domiciliary decedent may take an elective share amount equal to the value of either (a) 1/3 of the augmented estate or, (b) a supplemental elective share amount equal to \$75,000 less (i) amounts passing from the augmented estate to the spouse under §75-2-209(1) (by testate/intestate succession and non-probate transfers [§75-2-209(1)(a)], spouse's separate property and non-probate transfers to others [§75-2-209(1)(b)] decedent's separate property passing to spouse by testate or intestate succession or non-probate transfer [§75-2-209(1)(c)], and the homestead, exempt property, and family allowances [§75-2-209(1)(d)]) and (ii) elective share payable from decedent's probate/non-probate transfers to others [under §75-2-209(2) and (3)]. |
| Property Subject to Elective Share: | Decedent's augmented estate consists of the sum of the values of all property, whether real or personal, movable or immovable, tangible or intangible, wherever situated, that constitute (a) decedent's "net probate estate"; (b) decedent's non-probate transfers to others and to spouse, (c) spouse's property and non-probate transfers to others [§75-2-203]. Decedent's "net probate estate" is the decedent's probate estate reduced by funeral and administration expenses, homestead allowance, family allowances, exempt property, and enforceable claims [§75-2-204]. |
| Satisfaction of Elective Share: | The following are applied first to satisfy the elective share amount and to reduce/eliminate contributions from decedent's probate estate and non-probate transfers to others: (a) amounts included in the augmented estate passing to spouse by testate or intestate succession under §75-2-204 and non-probate transfers to spouse under §75-2-206; (b) spouse's property and non-probate transfers to others included in the augmented estate under §75-2-207; (c) decedent's separate property passing to spouse at death under §75-2-208; and (d) spouse's homestead allowance, exempt property, and family allowance [§75-2-209(1)(a) – (d)]. If the foregoing is insufficient, amounts included in probate estate and non-probate transfers to others, <i>other than amounts included under §75-2-205(3)(a) or (c)</i> , are applied first to satisfy the balance or the supplemental elective-share amount, and liability is equitably apportioned among recipients of probate estate and non-probate transfers [§75-2-209(2)]. If the foregoing is insufficient, balance is paid from remaining portion of decedent's non-probate transfers, and equitably apportioned among the recipients [§75-2-209(3)]. |
| Deadline for Election: | Must elect within nine months after the date of decedent's death, or within six months after the probate of decedent's will, whichever occurs later; if petition is filed later than nine months after death, decedent's non-probate transfers to others are excluded from the augmented estate [§75-2-211(1)]. Court may extend deadline for making election upon spouse's petition for additional time and for good cause; if court award's spouse additional time to elect, decedent's non-probate transfers to others are included in the augmented estate [§75-2-211(2)]. |
| Election Procedure / Who Can File?: | Petition for elective share must be filed in the court and mailed or delivered to the personal representative, if any [§75-2-211(1)]. Elective share petition must be filed during spouse's lifetime by spouse, personally, or by spouse's conservator, guardian, or attorney-in-fact [§75-2-212(1)]. If election is exercised on behalf of incapacitated spouse, elective share is set aside in trust for the spouse's benefit [§75-2-212(2)]. |
| Spouse's Right vs. Non-Domiciliary Property | Included in the augmented estate [§75-2-203]. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | The right, if any, of non-domiciliary decedent's spouse to take an elective share of property in Utah is governed by the law of decedent's domicile at Decedent's death [§75-2-202(4)]. Rights to homestead, exempt property, and family allowances for non-domiciliary decedent's spouse governed under laws of decedent's domicile at death [§75-2-401]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

| UTAH, continued | |
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| Waiver / Preclusion of Spouse's Rights: | Spouse's right of/to elective share, homestead allowance, exempt property, and/or family allowance may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the spouse [§75-2-213(1)]. A waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse is a waiver of all rights of elective share, homestead allowance, exempt property, and family allowance in the property of the other and a renunciation of all benefits that would otherwise pass by intestate succession or under any will executed before the waiver [§75-2-213(4)]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

VERMONT

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|--|
| Common Law | Probate-Only | Title 14, Part 2, Chapter 42, Subchapter 2, Sections 311-322 |

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|---|---|
| Intestacy - Spouse's Share: | Entire estate if (a) decedent has no surviving descendants or (b) all decedent's surviving descendants are descendants of the spouse; 1/2 of the estate if decedent has one or more descendants who are not descendants of spouse [14 §311]. |
| Allowance(s) / Exemption(s): | Spouse entitled to receive the following: (a) all furnishings and furniture in decedent's household [14 §312]; (b) if estate consists primarily of a vessel, snowmobile, or all-terrain vehicle, spouse deemed owner of such item automatically [14 §313]; (c) a reasonable allowance for spouse's expenses of maintenance until settlement of the estate, but only until spouse's share in the estate is assigned to spouse, or if estate is insolvent, then for no longer than eight months after administration granted [14 §316]; and (d) a homestead exemption not exceeding \$125,000 in value [§27 §101 and §105]. Election to request allowances and homestead exemption must be made within eight months after will is proved or letters of administration are granted [Probate Rule 13(a)]. |
| Elective Share Rights: | Spouse may waive the provisions of decedent's will and, in lieu thereof, elect to take 1/2 of the balance of the probate estate remaining after payment of claims and expenses [14 §319(a)]. |
| Property Subject to Elective Share: | Decedent's estate after payment of claims and expenses [14 §319(a)]. A voluntary transfer of any property by a married person and not to take effect until after the transferor's death, made without adequate consideration and for the primary purpose of defeating a spouse's claim to a share of decedent's property so transferred, may be void and inoperative to bar the claim [14 §321]. |
| Satisfaction of Elective Share: | No statutory provision. |
| Deadline for Election: | Must elect within eight months after decedent's will is proved or letters of administration are granted; deadline may be extended by the court [Probate Rule 13(b)]. |
| Election Procedure / Who Can File?: | Election must be made using official form (available at www.vermontjudiciary.org) PE49 – Notice of Elections &/or Waivers by Spouse (01/2015). Spouse must be living at the time election is made; if spouse is mentally disabled and cannot make the election personally, a guardian or attorney in fact under a valid durable power of attorney may do so [§319(b)]. |
| Spouse's Right vs. Non-Domiciliary Property | No statutory provision. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | No statutory provision. |
| Waiver / Preclusion of Spouse's Rights: | Premarital agreements are enforceable under <i>Bassler v. Bassler</i> , 593 A.2d 82 (1991); presumably marital agreements are also enforceable on general contract theory. |

SURVIVING SPOUSE’S RIGHTS TO SHARE IN DECEASED SPOUSE’S ESTATE

VIRGINIA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|------------------------|---|
| Common Law | Augmented Estate – UPC | Title 64.2, Sub. II, Ch. 3, Art. 1.1, Sections 308.1-308.17 |

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|--|---|
| Intestacy - Spouse’s Share: | Entire estate if (a) decedent has no surviving descendants or (b) all descendants of decedent are descendants of the spouse; 1/3 of the estate if decedent has one or more surviving descendants, one or more of whom are not descendants of the spouse [§64.2-200.A.1 (real estate) and §64.2-201.A (personal estate)]. |
| Allowance(s) / Exemption(s): | Spouse of domiciliary decedent is entitled the following: reasonable allowance for maintenance during the period of administration, not to exceed \$24,000 [§64.2-309.A]; exempt property not exceeding \$20,000 in value in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects [§64.2-310]; and a homestead allowance of \$20,000 [§64.2-311.D], all of which are in addition to the elective share for decedents dying after January 1, 2017 (for prior decedents, homestead allowance was taken in lieu of elective share or spouse’s share of intestate/testate distribution [§64.2-311.C]). |
| Elective Share Rights: | Spouse of a domiciliary decedent has a right of election to take an elective-share amount equal to 50% of the value of the “marital-property portion of the augmented estate” [§64.2-308.3.A]; spouse’s homestead allowance, exempt property, and family allowance, if any, are not charged against, but are in addition to, the elective-share amount [642.-308.3.B]. ⁴ |
| Property Subject to Elective Share: | The augmented estate [under §64.2-308.4.A] consists of the sum of the values of all property, whether real or personal, movable or immovable, tangible or intangible, wherever situated, that constitute: (1) decedent’s “net probate estate” (reduced by funeral and administration expenses, homestead and family allowances, exempt property, and enforceable claims [defined in §642.-308.5]); (2) decedent’s non-probate transfers to others [defined in §642.-308.6]; (3) decedent’s non-probate transfers to spouse [defined in §642.-308.7]; and (4) spouse’s property and non-probate transfers to others [defined in §642.-308.8]. The “marital-property portion” is determined by multiplying the augmented estate, as determined in accordance with the foregoing, by a marriage duration vesting schedule [§64.2-308.4.B]. Property received by gift, inheritance, or other transfer without consideration is excluded from the augmented estate [§642.-308.9.B]. |
| Satisfaction of Elective Share: | The following are applied first to satisfy the elective share amount and to reduce/eliminate contributions from decedent’s probate estate and non-probate transfers to others: (a) property passing to spouse but excluded from the augmented estate [under §64.2-308.9.A]; (b) amounts included in the augmented estate passing to spouse via testate/intestate succession [under §642.-308.5] and non-probate transfer [under §64.2-308.7]; and (c) the “marital property portion” of augmented estate property of the spouse and spouse’s non-probate transfers to others [under §64.2-308.8] multiplied by the applicable percentage of the augmented estate determined under the vesting schedule in §64.2-308.4.B. [§64.2-308.10.A - B]. The entire, fair market value of property held in a trust for the spouse’s benefit which qualifies for the estate tax marital deduction is the value used in determining the augmented estate [§642.-308.9.C.2.a]. If the foregoing is insufficient, amounts included in decedent’s “net probate estate” <i>other than assets passing to the spouse by testate/intestate succession, and in decedent’s non-probate transfers to others under §64.2-308.6.1, §64.2-308.6.2, and §64.2-308.6.3b</i> are applied first to satisfy the balance of the elective share amount, and liability is apportioned among recipients of probate estate and non-probate transfers proportionally [§64.2-308.10.C]. If the foregoing is insufficient, balance is paid from remaining portion of decedent’s non-probate transfers to others, and apportioned among the recipients based on their relative interests [§64.2-308.10.D]. |
| Deadline for Election: | <u>Election.</u> Written election of a domiciliary decedent’s spouse must be filed no later than six months after the later of (a) admission of decedent’s will to probate or (b) qualification of an administrator on intestate decedent’s estate [§64.2-308.12.A]. <u>Complaint.</u> Spouse’s complaint to determine the elective share must be filed no later than six months after filing of the election; if spouse’s complaint is filed more than 12 months after decedent’s death, decedent’s non-probate transfers are excluded from the augmented estate for elective share purposes [§64.2-308.12.B]. |
| Election Procedure / Who Can File?: | Spouse’s <u>election</u> must be filed in the court or the clerk’s office, and the clerk shall record the election in the court’s will book; election must also be mailed or hand delivered to the personal representative, if any, within 30 days of filing [§64.2-308.12.A]. Spouse’s <u>complaint</u> must be filed in the same manner [§64.2-308.12.B]. Right of election may be exercised during spouse’s lifetime by spouse, personally, or by spouse’s conservator or attorney-in-fact [§642.-308.13.A]. If election is exercised on behalf of incapacitated spouse, elective share is set aside in trust for the spouse’s benefit [§64.2-308.13.B]. |

⁴ Elective share provisions summarized herein apply to decedents dying *after* January 1, 2017.

SURVIVING SPOUSE’S RIGHTS TO SHARE IN DECEASED SPOUSE’S ESTATE

| VIRGINIA, continued | |
|---|---|
| Spouse’s Right vs. Non-Domiciliary Property | Included in the augmented estate [§64.2-308.4]. |
| Spouse’s Right vs. Situs Property of Non-Domiciliary Decedent: | The right, if any, of a non-domiciliary decedent’s spouse to take an elective share of property in Virginia is governed by the law of decedent’s domicile at death [§64.2-308.3.C]. |
| Waiver / Preclusion of Spouse’s Rights: | Spouse’s right of/to elective share, homestead allowance, exempt property, and/or family allowance may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the spouse [§64.2-308.14.A]. Waiver of allowances and exempt property also permitted under §64.2-314. Absent contrary provision, a waiver of “all rights,” or equivalent language, in the property or estate of a present or prospective spouse is a waiver of all rights of elective share, homestead allowance, exempt property, and family allowance in the property of the other and a renunciation of all benefits that would otherwise pass by intestate succession or under any will executed before the waiver [§64.2-308.14.D]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

WASHINGTON

| Property Regime | Elective Share Type | Elective Share Statute Location |
|--------------------|---------------------|---------------------------------|
| Community Property | N/A | |

| | |
|---|--|
| Intestacy - Spouse's Share: | All of decedent's net community estate and one of the following shares: (1) all of decedent's net separate estate, if decedent has no surviving issue, parent, or issue of parent; (2) 1/2 of the decedent's net separate estate if decedent survived by issue; (3) 3/4 of decedent's net separate estate if decedent has no surviving issue but has one or more surviving parent or issue of parents [§11.04.015(a)]. |
| Allowance(s) / Exemption(s): | Spouse may petition the court for an award from the decedent's community property or separate property [§11.54.010(2)] in the amount of \$125,000 (amount specified for lands in §6.13.030(2)) [§11.54.010(1) and (2)], provided that expenses of the decedent's funeral, last illness, and estate administration expenses have been paid or provided for [§11.54.030(1)]. Petition for award must be filed before the earliest of: (a) 18 months after decedent's death if, within 12 months after death, either a (i) personal representative has been appointed or (ii) notice agent has filed a declaration and oath; (b) termination of any probate proceeding commenced in Washington; or (c) six years from date of decedent's death [§11.54.010(3)]. The award amount can be increased or decreased, in court's discretion [§11.54.040 and §11.54.050]. Spouse's award has priority over all other claims made in the estate [§11.54.60(1)]. |
| Elective Share Rights: | N/A Quasi-community property is all personal property, wherever situated, that is not community property and was acquired (a) by decedent while domiciled elsewhere and would have been community property if decedent were domiciled in Washington upon acquisition or (b) in derivation or exchange for property that would have been community property if decedent had been domiciled in Washington; also applies to real property in Washington or in another state if such state provides that law of decedent's domicile governs rights of spouse to share in such property [§26.16.220(1) and (2)]. |
| Property Subject to Elective Share: | N/A Quasi-community property: At death of a domiciliary decedent, 1/2 of any quasi-community property belongs to the spouse and the other 1/2 of any quasi-community property is subject to disposition at death by the decedent, and in the absence thereof, shall descend in the manner provided for community property under laws of intestacy under §11.04 [§26.16.230]. <i>Does not apply if Washington is the ancillary jurisdiction of a decedent domiciled in a common law property jurisdiction.</i> |
| Satisfaction of Elective Share: | N/A |
| Deadline for Election: | N/A |
| Election Procedure / Who Can File?: | N/A |
| Spouse's Right vs. Non-Domiciliary Property | Spouse entitled to 1/2 of quasi-community property outside of Washington if the other jurisdiction's law provides that decedent's domicile law governs rights to real property [§26.16.220(2) and §26.16.230]. |
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | No statutory provision. Situs law should apply under <i>lex loci rei sitae</i> doctrine. |
| Waiver / Preclusion of Spouse's Rights: | Spouses may waive, modify, or relinquish any quasi-community property right by signed written agreement, wherever executed, including without limitation community property agreements, prenuptial and postnuptial agreements, or agreements as to status of property [§26.16.250]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

WEST VIRGINIA

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|------------------------|-------------------------------------|
| Common Law | Augmented Estate – UPC | Chapter 42, Article 3, Sections 1-7 |

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|--|--|
| Intestacy - Spouse's Share: | Entire estate if (a) decedent has no surviving descendants or (b) all of decedent's surviving descendants are descendants of the spouse and spouse has no separate descendants who survive decedent; 3/5 of the estate if all of decedent's surviving descendants are descendants of spouse and spouse has one or more separate descendants who survive decedent; 1/2 of the estate if decedent has one or more descendants who are not descendants of the spouse [§42-1-3]. |
| Allowance(s) / Exemption(s): | No statutory provision. N.B. References in §42-3-2 to the "homestead exemption" and "property exemption" were retained erroneously from the UPC model provision when WV enacted the UPC. WV law has no such exemptions in the context of decedents' estates, probate, or spousal rights at death [ACTEC Fellow Christopher J. Winton identified this anomaly]. |
| Elective Share Rights: | Spouse of domiciliary decedent has a right of election against will or intestate share to take (a) an elective-share percentage of the decedent's augmented estate, determined on a marriage duration vesting schedule (up to 50%) or (b) a supplemental elective share amount equal to \$25,000 less (a) amounts passing to spouse by non-probate transfer (under §42-3-2(b)(3)), (b) spouse's separate property (§42-3-2(b)(4)), (c) amounts passing to spouse by testate/intestate succession (under §42-3-6(a)(1)), (d) amounts that would have passed to spouse but were disclaimed (under §42-3-6(a)(3)), if sum of the foregoing ((a) through (b)) is less than \$25,000 [§42-3-1]. |
| Property Subject to Elective Share: | Decedent's augmented estate consists of the sum of the following values: (a) decedent's probate estate, reduced by funeral and administration expenses, homestead exemption, property exemption, and enforceable claims [§42-3-2(b)(1)]; (b) decedent's "re-claimable estate," (or non-probate transfers to others) [§42-3-2(b)(2)]; (c) decedent's non-probate transfers to spouse other than homestead exemption and exempt property [§42-3-2(b)(3)]; and (d) spouse's separate property [§42-3-2(b)(4)]. Life insurance, accident insurance, pension, profit sharing, retirement, and other benefit plans payable to persons other than spouse are excluded from the augmented estate [§42-3-2(c)]. |
| Satisfaction of Elective Share: | The following are applied first to satisfy the elective share amount and to reduce/eliminate contributions from decedent's probate estate and non-probate transfers to others: (a) amounts passing to spouse by testate/intestate succession; (b) decedent's non-probate transfers to spouse other than homestead exemption and exempt property (under §42-3-2(b)(3)); (c) amounts that would have passed to spouse but were disclaimed; and (d) spouse's separate property up to the applicable percentage under §42-3-1 [§42-3-6(a)]. If the foregoing is insufficient, then amounts included in decedent's probate estate and "reclaimable estate" <i>other than amounts transferred irrevocably within two years before decedent's death</i> are applied first to satisfy the balance of the elective share amount, and liability is equitably apportioned among recipients of decedent's probate estate and "reclaimable estate" [§42-3-6(b)]. If the foregoing is insufficient, then the remaining portion of decedent's "reclaimable estate" are applied to satisfy the balance of the elective share amount, and liability is equitably apportioned among recipients of said "reclaimable estate" property [§42-3-6(c)]. |
| Deadline for Election: | Must elect within nine months after the date of decedent's death, or within six months after the probate of decedent's will, whichever expires later [§42-3-4(a)]; spouse may petition for extension of time to make election within the initial nine-month deadline [§42-3-4(b)]. Decedent's "reclaimable estate" is <i>excluded</i> from the augmented estate for elective share purposes if petition for elective share is filed later than nine months after date of death [§42-3-4(a)]; provided, however, that if court grants spouse's petition for additional time to make election, decedent's "reclaimable estate" is <i>not excluded</i> from the augmented estate for elective share purposes, but is <i>excluded for purposes of satisfying the elective share amount</i> (or supplemental elective share amount) [§42-3-4(b)]. |
| Election Procedure / Who Can File?: | Petition for election must be filed in the court and mailed or delivered to the personal representative, if any, and must be served on the distributees and recipients of augmented estate portions that may be adversely affected by the election [§42-3-4(a)]. Petition for election must be filed during spouse's lifetime by spouse, personally, or spouse's conservator, guardian, or attorney-in-fact [§42-3-3(a)]. If election is exercised on behalf of incapacitated spouse, elective share is set aside in trust for the spouse's benefit [§42-3-3(b)]. |
| Spouse's Right vs. Non-Domiciliary Property | Included in the augmented estate as part of the decedent's "reclaimable estate" [§42-3-2(b)(2)]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

| WEST VIRGINIA, continued | |
|---|--|
| Spouse's Right vs. Situs Property of Non-Domiciliary Decedent: | Spouse of a non-domiciliary decedent has the right, if any, to take an elective share of West Virginia property as provided in the law of decedent's domicile at death [§42-3-1(c)]. |
| Waiver / Preclusion of Spouse's Rights: | Spouse's right of election may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the spouse [§42-3-3a(a)]. Waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse is a waiver of all rights of elective share and a renunciation of all benefits otherwise passing by intestate succession or under any will executed before the waiver [§42-3-3a(d)]. |

SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE

WISCONSIN

| Property Regime | Elective Share Type | Elective Share Statute Location |
|---------------------|---------------------|---------------------------------|
| Community Property* | N/A* | |

| | |
|--|---|
| Intestacy - Spouse's Share: | Entire net estate if (a) decedent has no surviving issue or (b) all surviving issue of decedent are issue of spouse; 1/2 of decedent's property that is neither "marital property" nor held equally with spouse as tenants in common, if decedent has surviving issue, one or more of whom are not issue of spouse [§852.01(1)(a)]. |
| Allowance(s) / Exemption(s): | Spouse may receive a family allowance during the estate administration, in court's discretion, for up to one year, and for additional one-year periods [§861.31(1m)]. Spouse may also receive a special allowance for support if spouse lacks ample means to provide for spouse's support [§861.35(1m)(c)]. If estate is insolvent, spouse may petition court to set aside exempt property of a value not exceeding \$10,000 [§861.41(1)]. Spouse may select items of personal property other than certain items specifically bequeathed if all claims are paid in full, or otherwise election limited to \$5,000 in value (i.e., if claims remain unpaid) [§861.33(2)]. |
| Elective Share Rights: | <p>* Wisconsin is a community property (or "marital property") state by default; law presumes all property of spouses to be "marital property" [§766.31(2)]. However, spouses may reclassify "marital property" as "individual property" by written agreement [§766.31(10)], which effectively removes such property from community property treatment. See §766.001 <i>et seq.</i></p> <p>Spouse of domiciliary decedent has the right to an elective share of up to 50% of the decedent's "augmented deferred marital property estate" [§861.02(1)]; i.e., if not all property is "marital property."</p> |
| Property Subject to Elective Share: | <p>N/A if all property is "marital property."</p> <p>"Deferred marital property" is property for which the "marital property" presumption under §766.31(2) is rebutted [§861.02(2)(a)]. The "augmented deferred marital property estate" is the total value of "deferred marital property" of both spouses, whether real or personal, wherever situated, and whenever acquired, including (a) decedent's "deferred marital property" passing by probate and non-probate transfers, (b) decedent's gifts of "deferred marital property" made during two years before decedent's death, and (c) spouse's "deferred marital property" [§861.02(2)(b)].</p> |
| Satisfaction of Elective Share: | <p>N/A if all property is "marital property."</p> <p>Spouse's "deferred marital property elective share amount" is satisfied from (a) spouse's deferred marital property [under §861.04], (b) all marital, individual, deferred marital, or deferred individual property transferred to spouse, or any beneficial interests therein, (i) from decedent's probate estate (other than exempt property under §861.33 or §861.41, family allowance under §861.31 or §861.35, unless court determines otherwise, (ii) non-probate transfers, (iii) by operation of law, and (iv) by gift during decedent's lifetime (except for the first \$5,000 of gifts each year and deferred marital property that would have been excluded from the "augmented deferred marital property estate" under §861.04 [§861.06(2)(b)(1) through (4)]. If the foregoing is insufficient, liability for the elective share amount is applied proportionally to decedent's probate and non-probate to others of included in the "augmented deferred marital property estate" under §861.03(1), (2), (3), and (4)(b)(2) [§861.06(3)]. If the foregoing is insufficient, the remaining elective share balance is satisfied proportionally from all other transfers made within two years of decedent's death to non-spouse persons included in the "augmented deferred marital property estate" under §861.03(4)(b)(1) and (3) [§861.06(4)].</p> |
| Deadline for Election: | <p>N/A if all property is "marital property."</p> <p>Election to take 50% of decedent's "augmented deferred marital property estate" must be filed within six months after date of decedent's death; spouse may petition for extension of time to make election within the initial six-month period [§861.08(1) and (3)].</p> |
| Election Procedure / Who Can File?: | <p>N/A if all property is "marital property."</p> <p>Petition for the election must be filed with the court (a) having jurisdiction of decedent's probate proceeding, or (b) where probate proceedings would occur if no proceeding has commenced, and mailed or delivered to the personal representative, if any [§861.08(1)]</p> <p>Election must be made during spouse's lifetime by spouse, personally, or spouse's conservator, guardian, guardian ad litem, or attorney-in-fact [§861.09].</p> |
| Spouse's Right vs. Non-Domiciliary Property | Included in the "augmented deferred marital property estate" under §861.02(2)(b). |

SURVIVING SPOUSE’S RIGHTS TO SHARE IN DECEASED SPOUSE’S ESTATE

| WISCONSIN, continued | |
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| Spouse’s Right vs. Situs Property of Non-Domiciliary Decedent: | <p>Spouse of a non-domiciliary <i>testate</i> decedent who owned real property in Wisconsin that is neither community property nor marital property has the same right to elect to take a portion of or interest in such property as if the property were located in the decedent’s domicile at death, exercisable in accordance with the elective share procedures of decedent’s domicile [§861.20(1)].</p> <p>Spouse of a non-domiciliary <i>intestate</i> decedent who owned real property in Wisconsin has the same right to the property under intestate succession as if the property were located in the decedent’s domicile at death [§861.20(2)].</p> |
| Waiver / Preclusion of Spouse’s Rights: | <p>Spouse’s right to elect a deferred marital property elective share amount may be waived wholly or partially, before or after marriage, by a marital property agreement enforceable under §766.58 or in a signed document filed with a court described in §861.08(1)(a) after decedent’s death [§861.10(1)]. A waiver of “all rights,” or equivalent language, in the property or estate of a present or prospective spouse is a waiver of all rights in the deferred marital property elective share amount [§861.10(2)].</p> |

SURVIVING SPOUSE’S RIGHTS TO SHARE IN DECEASED SPOUSE’S ESTATE

WYOMING

| Property Regime | Elective Share Type | Elective Share Statute Location |
|-----------------|---------------------|--------------------------------------|
| Common Law | Probate-Only | Title 2, Chapter 5, Sections 101-105 |

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|---|---|
| Intestacy - Spouse’s Share: | Entire estate if decedent has no surviving children or descendants; 1/2 of the estate if decedent has surviving children or descendants [§2-4-101(a)]. |
| Allowance(s) / Exemption(s): | Spouse is entitled to homestead allowance, exempt property, and family allowance regardless of whether spouse (a) elects to take an elective share or (b) renounces the benefits conferred by decedent’s will; provided, however, that if it clearly appears from the will that a provision therein made for spouse is intended to be in lieu of these rights, then spouse may not claim the rights unless spouse renounces the provisions made for spouse in the will [§2-5-103]. |
| Elective Share Rights: | Spouse of domiciliary decedent may take an elective share of property passing under decedent’s will as follows: (a) 1/2 of the property, if decedent has (i) no surviving issue or (ii) surviving issue who are issue of the spouse; or (b) 1/4 of the property if decedent has surviving issue who are no issue of the spouse [§2-5-101(a)]. |
| Property Subject to Elective Share: | Elective share applies to decedent’s property subject to disposition under will, reduced by funeral and administrative expenses, homestead allowance, family allowances and exemption, and enforceable claims [§2-5-101(a)]. In <i>Poland v. Nalee (In re Estate of George)</i> , 265 P.3d 222 (2011), the Wyoming Supreme Court ruled that decedent’s estate could not be augmented for elective share purposes to include property in decedent’s revocable trust or property transferred by will substitutes; ruling also indicates that Wyoming does not recognize a “motive-based” approach that would restore to the estate (and make available for elective share purposes) property a decedent transferred in fraud of spouse’s rights. |
| Satisfaction of Elective Share: | After notice and hearing, court determines the right to the elective share and orders its payment from assets of the decedent’s estate [§2-5-105(c)]. |
| Deadline for Election: | Any time after filing of an inventory and not more than three months after admission of the will to probate, court must advise spouse of his or her right of election, explaining fully the right of election and that failure to elect results in the will disposing of estate [§2-5-104(a)]. Petition for election must be filed within the later of (a) three months after admission of the will to probate or (b) 30 days after court advises spouse of right of election (as described above) [§2-5-105(a)]. |
| Election Procedure / Who Can File?: | Petition to take elective share must be filed in the court and mailed or delivered to the personal representative, if any [§2-5-10(a)]. If spouse of domiciliary decedent dies or becomes incompetent within three months after decedent’s will is admitted to probate, or before being advised of the right of election (required under §2-5-104), spouse’s personal representative, if deceased, or guardian, if incompetent, can exercise the spouse’s right of election [§2-5-101(c)]. |
| Spouse’s Right vs. Non-Domiciliary Property | No statutory provision. |
| Spouse’s Right vs. Situs Property of Non-Domiciliary Decedent: | Spouse of a non-domiciliary decedent has the right, if any, to take an elective share in Wyoming property as provided in the law of decedent’s domicile at death [§2-5-101(b)]. |
| Waiver / Preclusion of Spouse’s Rights: | Spouse’s rights of/to elective share, homestead allowance, exempt property, and/or family allowance may be waived totally or partially before or after marriage, by a written contract, agreement, or waiver signed by spouse after fair disclosure. Absent contrary provision, a waiver of “all rights” (or equivalent language) in the property or estate of a present or prospective spouse is a waiver of all rights to elective share, homestead allowance, exempt property, and family allowance and a renunciation of all benefits otherwise passing by intestate succession or under the provisions of any will executed before the waiver [§2-5-102]. |

SURVIVING SPOUSE’S RIGHTS TO SHARE IN DECEASED SPOUSE’S ESTATE

Updated as of July 2018
Alex S. Tanouye, Esq.

AUTHOR’S NOTE:

This survey was first submitted to The American College of Trust and Estate Counsel for publication in December 2017, while I was an attorney in private practice with the Bethesda, Maryland law firm Pasternak & Fidis, P.C. I am especially grateful for the support and encouragement of Nancy G. Fax, Anne W. Coventry, and Stephanie L. Perry – three of my former law partners at Pasternak & Fidis – during my time at the firm and, particularly, during the preparation of this survey. Thank you, my friends.

Please contact Alex S. Tanouye at ast4@ntrs.com or (202) 303-1727 with any updates, corrections, and/or comments related to this survey.

DISCLAIMER:

The summaries of each jurisdiction’s laws presented in this survey are based on the author’s review of relevant statutes and related case law. The summaries are provided for informational purposes only and might contain oversimplifications or inaccuracies. The author assumes no responsibility for the timeliness or accuracy of the information contained in this survey.

EXPLANATORY NOTES:

Throughout this survey, the term “decedent” refers to the deceased spouse, while the term “spouse” refers to the surviving spouse.

In “Probate-Only” jurisdictions, the surviving spouse’s right of election applies only to property passing under the deceased spouse’s will (i.e., “probate property”). Unless indicated otherwise, property transferred at death outside of the decedent spouse’s will, e.g., revocable trust property, jointly-owned property with right of survivorship, TOD/POD accounts, and property passing pursuant to beneficiary designation, is excluded in determining the surviving spouse’s elective share.

CONTRIBUTORS:

Preparation of this survey was a multi-year endeavor, involving at the outset creation of a spreadsheet summarizing only the elective share laws, if any, of all 51 jurisdictions. The spreadsheet served as the basis for a presentation which the author and Ryan A. Walsh, Esq. (Hamilton Thies & Lorch LLP, Chicago, IL) gave at the ABA Section of Real Property, Trust & Estate Law 2017 Spring Symposia. The author is grateful for contributions toward completion of the spreadsheet from the following: (1) Alexander L. Fischer, third-year law student at Syracuse University College of Law (and legal extern at Pasternak & Fidis, P.C.), (2) Christina K. Scopin, Esq., of Pasternak & Fidis, P.C., (3) Brian J. Deaver II, Esq., of Stouffer Legal, LLC (during his clerkship with Pasternak & Fidis, P.C.), and (4) Harout J. Doukmajian, third-year law student at the University of Maryland Francis King Carey School of Law (during his clerkship with Pasternak & Fidis, P.C.).