

PART 2. ELECTIVE SHARE OF SURVIVING SPOUSE

Cross References

Applies only to the estates of decedents dying after January 1, 1997; for other effect and transition provisions, see §560:8-201.

§560:2-201 Definitions. In this part:

As used in sections other than section 560:2-205, "decedent's nonprobate transfers to others" means the amounts that are included in the augmented estate under section 560:2-205.

"Fractional interest in property held in joint tenancy with the right of survivorship", whether the fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

"Marriage", as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

"Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that the person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.

"Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary designation.

"Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power, held a power to create a present or future interest in the decedent's self, the decedent's creditors, the decedent's estate, or creditors of the decedent's estate, and includes a power to revoke or invade the principal of a trust or other property arrangement.

"Probate estate" means property that would pass by intestate succession if the decedent died without a valid will.

"Property" includes values subject to a beneficiary designation.

"Reciprocal beneficiary" means an adult who is a party to a registered reciprocal beneficiary relationship in accordance with chapter 572C, and has a valid certificate of reciprocal beneficiary relationship that has not been terminated.

"Reciprocal beneficiary relationship" is the registered status of two adults defined in chapter 572C.

"Right to income" includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement.

"Transfer", as it relates to a transfer by or of the decedent, includes:

(1) An exercise or release of a presently exercisable general power of appointment held by the decedent;

(2) A lapse at death of a presently exercisable general power of appointment held by the decedent; and

(3) An exercise, release, or lapse of a general power of appointment that the decedent created in the decedent's self of a power described in section 560:2-205(2)(B) that the decedent conferred on a nonadverse party. [L 1996, c 288, pt of §1; am L 1997, c 383, §11]

§560:2-202 Elective share. (a) Elective-share amount. The surviving spouse or reciprocal beneficiary of a decedent who dies domiciled in this State has a right of election, under the limitations and conditions stated in this part, to take an elective-share amount equal to the value of the elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, or the reciprocal beneficiary and the decedent were in a reciprocal beneficiary relationship, in accordance with the following schedule:

If the decedent and the spouse were married to each other, or the decedent and the reciprocal beneficiary were in a The elective-share relationship: percentage is:

Less than 1 year Supplemental amount only.

1 year but less than 2 years 3% of the augmented estate.

2 years but less than 3 years 6% of the augmented estate.

3 years but less than 4 years 9% of the augmented estate.

4 years but less than 5 years 12% of the augmented estate.

5 years but less than 6 years 15% of the augmented estate.

6 years but less than 7 years 18% of the augmented estate.

7 years but less than 8 years 21% of the augmented estate.

8 years but less than 9 years 24% of the augmented estate.

9 years but less than 10 years 27% of the augmented estate.

10 years but less than 11 years 30% of the augmented estate.

11 years but less than 12 years 34% of the augmented estate.

12 years but less than 13 years 38% of the augmented estate.

13 years but less than 14 years 42% of the augmented estate.

14 years but less than 15 years 46% of the augmented estate.

15 years or more 50% of the augmented estate;

provided, however, the surviving spouse or reciprocal beneficiary may elect to take a share smaller than that to which the surviving spouse or reciprocal beneficiary is entitled hereunder.

(b) Supplemental elective-share amount. If the sum of the amounts described in sections 560:2-207, 560:2-209(a)(1), and that part of the elective-share amount payable from the decedent's probate estate and nonprobate transfers to others under section 560:2-209(b) and (c) is less than \$50,000, the surviving spouse or reciprocal beneficiary is entitled to a supplemental elective-share amount equal to \$50,000 minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in section 560:2-209(b) and (c).

(c) Effect of election on statutory benefits. If the right of election is exercised by or on behalf of the surviving spouse or reciprocal beneficiary, the surviving spouse's or reciprocal beneficiary's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

(d) Non-domiciliary. The right, if any, of the surviving spouse or reciprocal beneficiary of a decedent who dies domiciled outside this State to take an elective share in property in this State is governed by the law of the decedent's domicile at death. [L 1996, c 288, pt of §1; am L 1997, c 383, §12]