ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

PART 2

ELECTIVE SHARE OF SURVIVING SPOUSE

700.2201 Surviving spouse's right to elective share.

Sec. 2201. Subject to sections 2203 to 2205, upon an individual's death, the individual's surviving spouse has the right described by section 2202.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2202 Election of surviving spouse.

Sec. 2202. (1) The surviving widow of a decedent who was domiciled in this state and who dies intestate may file with the court an election in writing that she elects to take 1 of the following:

(a) Her intestate share under section 2102.

(b) Her dower right under sections 1 to 29 of 1846 RS 66, MCL 558.1 to 558.29.

(2) The surviving spouse of a decedent who was domiciled in this state and who dies testate may file with the court an election in writing that the spouse elects 1 of the following:

(a) That the spouse will abide by the terms of the will.

(b) That the spouse will take 1/2 of the sum or share that would have passed to the spouse had the testator died intestate, reduced by 1/2 of the value of all property derived by the spouse from the decedent by any means other than testate or intestate succession upon the decedent's death.

(c) If a widow, that she will take her dower right under sections 1 to 29 of 1846 RS 66, MCL 558.1 to 558.29.

(3) The surviving spouse electing under subsection (1) is limited to 1 choice. Unless the testator's will plainly shows a contrary intent, the surviving spouse electing under subsection (2) is limited to 1 choice. The right of election of the surviving spouse must be exercised during the lifetime of the surviving spouse. The election must be made within 63 days after the date for presentment of claims or within 63 days after service of the inventory upon the surviving spouse, whichever is later.

(4) Notice of right of election shall be served upon the decedent's spouse, if any, as provided in section 3705(5), and proof of that notice shall be filed with the court. An election as provided by this section may be filed instead of service of notice and filing of proof.

(5) In the case of a legally incapacitated person, the right of election may be exercised only by order of the court in which a proceeding as to that person's property is pending, after finding that exercise is necessary to provide adequate support for the legally incapacitated person during that person's life expectancy.

(6) The surviving spouse of a decedent who was not domiciled in this state 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 the decedent was domiciled at the time of death.

(7) As used in subsection (2), “property derived by the spouse from the decedent” includes all of the following transfers:

(a) A transfer made within 2 years before the decedent's death to the extent that the transfer is subject to federal gift or estate taxes.

(b) A transfer made before the date of death subject to a power retained by the decedent that would make the property, or a portion of the property, subject to federal estate tax.

(c) A transfer effectuated by the decedent's death through joint ownership, tenancy by the entireties, insurance beneficiary, or similar means.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2203 Failure to timely elect; exceptions.

Sec. 2203. If a surviving spouse fails to make an election within the time specified in section 2202, it is conclusively presumed that an intestate decedent's widow elects her intestate share or that a testate decedent's spouse elects to abide by the terms of the will, except in either of the following instances:

(a) If an election is not made and the principal administration is closed, and if after that administration is closed it appears to the court that assets belonging to the estate are discovered and administration is granted, the election may be made out of the newly discovered assets only upon good cause shown at any time before that administration is closed.

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(b) Before the estate is closed, upon petition of the spouse and after notice to all interested persons, the court may permit the spouse to make an election to which the spouse was entitled as though the spouse had done so within the time specified in section 2202, if the court considers it proper on account of litigation connected with the estate or the establishment of further claims against the deceased, or for other cause. The court shall limit the time within which the spouse may make an election under this subdivision.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2204 Actions not preventing election.

Sec. 2204. Filing of a petition to admit the will of a deceased spouse, failing to object or consenting to admission of the will to probate, or accepting appointment as a personal representative does not prevent a surviving spouse's election to take against the will.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2205 Waiver of rights by surviving spouse.

Sec. 2205. The rights of the surviving spouse to a share under intestate succession, homestead allowance, election, dower, exempt property, or family allowance 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. Unless it provides to the contrary, a waiver of “all rights” in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separate maintenance is a waiver of all rights to homestead allowance, election, dower, exempt property, and family allowance by the spouse in the property of the other and is an irrevocable renunciation by the spouse of all benefits that would otherwise pass to the spouse from the other spouse by intestate succession or by virtue of a will executed before the waiver or property settlement.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2206 Pre-existing right not created.

Sec. 2206. Sections 2201 to 2205 shall not be construed as creating an inchoate or choate right to the rights described in those sections in the property of a spouse before the death of a spouse.

History: 1998, Act 386, Eff. Apr. 1, 2000.

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