

§ 30-3.4. Procedure for determining the elective share.

(a) **Exercisable Only During Lifetime.** – The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, by the surviving spouse's agent if the surviving spouse's power of attorney expressly authorizes the agent to do so or to generally engage in estate, trusts, and other beneficial interests, or, with approval of court, by the guardian of the surviving spouse's estate or general guardian. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) **Time Limitations.** – A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration in connection with the will or intestate proceeding with respect to which the surviving spouse claims the elective share by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) **Repealed by Session Laws 2011, c. 344, s. 6, effective January 1, 2012, and applicable to estates of decedents dying on or after that date.**

(d) **Repealed by Session Laws 2009, c. 368, s. 1, effective July 27, 2009, and applicable to decedents dying on or after October 1, 2009.**

(d1) **Mediation.** – The clerk may order mediation as described in G.S. 7A-38.3B of any disputes in connection with an elective share proceeding.

(e) **Repealed by Session Laws 2009, c. 368, s. 1, effective July 27, 2009, and applicable to decedents dying on or after October 1, 2009.**

(e1) **Procedure.** – An elective share proceeding shall be an estate proceeding and shall be conducted in accordance with the procedures of Article 2 of Chapter 28A of the General Statutes. The petition shall be filed by the clerk upon payment of the costs assessed in G.S. 7A-307.

(e2) **Information About Total Net Assets.** – In order to assist the clerk in determining whether a surviving spouse is entitled to an elective share, and, if so, the amount thereof, the following provisions apply:

(1) **Submission within two months.** – In every case in which a petition to determine an elective share has been filed, within two months of the filing of the petition, the personal representative shall submit sufficient information about the total assets for the clerk to determine the elective share. To fulfill its obligation to provide information, the personal representative may prepare and submit to the clerk a proposed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 or other information as the clerk sees fit.

(2) **Examination regarding assets.** – If the personal representative, the surviving spouse, or a responsible person has reasonable grounds to believe that any person has a claim or has in its possession assets included in Total Net Assets, then the personal representative, surviving spouse, or responsible person may use the procedures set out in G.S. 28A-15-12 to cause the clerk to examine the person believed to have a claim or to possess assets included in Total Net Assets.

(f) **Findings and Conclusions.** – After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to

the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Repealed by Session Laws 2009, c. 368, s. 1, effective July 27, 2009, and applicable to decedents dying on or after October 1, 2009.

(h) Expenses. – The expenses (including attorneys' fees) reasonably incurred by the personal representative, other responsible persons, and the surviving spouse in connection with elective share proceedings shall be equitably apportioned by the clerk of court in the clerk's discretion among the personal representative, other responsible persons, and the surviving spouse. (2000-178, s. 2; 2003-296, s. 4; 2009-368, s. 1; 2011-344, s. 6; 2017-153, s. 2.1; 2020-60, s. 2.)