Article 1A.

Elective Share.

§ 30-3.1. Right of elective share.

(a) Elective Share. – The surviving spouse of a decedent who dies domiciled in this State has a right to claim an "elective share", which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(4), less (ii) the value of Net Property Passing to Surviving Spouse, as defined in G.S. 30-3.2(2c). The applicable share of the Total Net Assets is as follows:

(1) If the surviving spouse was married to the decedent for less than five years, fifteen percent (15%) of the Total Net Assets.

(2) If the surviving spouse was married to the decedent for at least five years but less than 10 years, twenty-five percent (25%) of the Total Net Assets.

(3) If the surviving spouse was married to the decedent for at least 10 years but less than 15 years, thirty-three percent (33%) of the Total Net Assets.

(4) If the surviving spouse was married to the decedent for 15 years or more, fifty percent (50%) of the Total Net Assets.

(b) Repealed by Session Laws 2013-91, s. 1(d), effective October 1, 2013, and applicable to estates of decedents dying on or after October 1, 2013.

(c) Repealed by Session Laws 2009-368, s. 1, effective August 27, 2009, and applicable to decedents dying on or after October 1, 2009. (2000-178, s. 2; 2003-296, s. 1; 2009-368, s. 1; 2013-91, s. 1(d).)

§ 30-3.2. Definitions.

The following definitions apply in this Article:

(1) Claims. – Includes liabilities of the decedent, whether arising in contract, in tort, or otherwise, and liabilities of the decedent's estate that arise at or after the death of the decedent, including funeral and administrative expenses, except for:

a. A claim for equitable distribution of property pursuant to G.S. 50-20 awarded subsequent to the death of the decedent.

b. Death taxes, except for those death taxes attributable to Property Passing to the Surviving Spouse. "Death taxes attributable to Property Passing to the Surviving Spouse" equals the amount of decedent's death taxes as finally determined, less the amount such death taxes would have been if all Property Passing to the Surviving Spouse had qualified for the federal estate tax marital deduction pursuant to section 2056 of the Code or had qualified for a similar provision under the laws of another applicable taxing jurisdiction.

c. A claim founded on a promise or agreement of the decedent, to the extent such claim is not arm's length or is not supported by full or adequate consideration in money or money's worth.

d. Expenses apportioned by the clerk of court under G.S. 30-3.4(h).

(1a) Code. – The Internal Revenue Code in effect at the time of the decedent's death.

(2) Death taxes. – Any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(2a) General power of appointment. – Any power of appointment, including a power to designate the beneficiary of a beneficiary designation, exercisable by the

decedent, regardless of the decedent's capacity to exercise such power, in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except for (i) powers limited by an "ascertainable standard" as defined in G.S. 36C-1-103 and (ii) powers which are not exercisable by the decedent except in conjunction with a person who created the power or has a substantial interest in the property subject to the power and whose interest is adverse to the exercise of the power in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate. In no event shall a power held by the decedent as attorney-in-fact under a power of attorney be considered a general power of appointment.

(2b) Lineal descendant. – Defined in G.S. 29-2.

(2c) Net Property Passing to Surviving Spouse. – The Property Passing to Surviving Spouse reduced by (i) death taxes attributable to property passing to surviving spouse, and (ii) claims payable out of, charged against or otherwise properly allocated to Property Passing to Surviving Spouse.

(3) Nonadverse trustee. – Any of the following:

a. Any person who does not possess a substantial beneficial interest in the trust that would be adversely affected by the exercise or nonexercise of the power that the individual trustee possesses respecting the trust;

b. Any person subject to a power of removal by the surviving spouse with or without cause; or

c. Any company authorized to engage in trust business under the laws of this State, or that otherwise meets the requirements to engage in trust business under the laws of this State.

(3a) Nonspousal assets. – All property included in total assets other than the property included in Property Passing to Surviving Spouse.

(3b) Presently exercisable general power of appointment. – A general power of appointment which is exercisable at the time in question. A testamentary general power of appointment is not presently exercisable.

(3c) Property Passing to Surviving Spouse. – The sum of the values, as valued pursuant to G.S. 30-3.3A, of the following:

a. Property (i) devised, outright or in trust, by the decedent to the surviving spouse or (ii) that passes, outright or in trust, to the surviving spouse by intestacy, beneficiary designation, the exercise or failure to exercise the decedent's testamentary general power of appointment or the decedent's testamentary limited power of appointment, operation of law, or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system.

b. Any year's allowance awarded to the surviving spouse.

c. Property renounced by the surviving spouse.

d. The surviving spouse's interest in any life insurance proceeds on the life of the decedent.

e. Any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of the decedent for which the surviving spouse signs a statement acknowledging such a gift. For purposes of this sub-subdivision, any gift to the surviving spouse by

the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be deemed to be a gift of one-half of the entire interest in property so held by the decedent and the surviving spouse.

f. Property awarded to the surviving spouse, subsequent to the death of the decedent, pursuant to an equitable distribution claim under G.S. 50-20.

g. Property held in a spousal trust described in G.S. 30-3.3A(e)(1).

If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.

(3d) Responsible person. – A person or entity other than the surviving spouse that received, held, or controlled property constituting nonspousal assets on the date used to determine the value of the property. The personal representative is the responsible person for nonspousal assets that pass under the decedent's will or by intestate succession.

(3e) Responsible person's nonspousal assets. – The nonspousal assets received, held, or controlled by a responsible person.

(3f) Total assets. – The sum of the values, as determined pursuant to G.S. 30-3.3A, of the following:

a. The decedent's property that would pass by intestate succession if the decedent died without a will, other than wrongful death proceeds;

b. Property over which the decedent, immediately before death, held a presently exercisable general power of appointment, except for (i) property held jointly with right of survivorship, which is includable in total assets only to the extent provided in sub-subdivision c. of this subdivision and (ii) life insurance, which is includable in Total Assets only to the extent provided in sub-subdivision d. of this subdivision. Includes, without limitation:

1. Property held in a trust that the decedent could revoke.
2. Property held in a trust to the extent that the decedent had an unrestricted power to withdraw the property.
3. Property held in a depository account owned by the decedent in a financial institution payable or transferable at decedent's death to a beneficiary designated by the decedent.
4. Securities owned by the decedent in an account or in certificated form that are payable or transferable at decedent's death to a beneficiary designated by the decedent.

c. Property held as tenants by the entirety or jointly with right of survivorship as follows:

1. One-half of any property held by the decedent and the surviving spouse as tenants by the entirety.
2. Property held by the decedent and one or more other persons as joint tenants with right of survivorship is included to the extent of the decedent's pro rata share of property attributable to the decedent's contribution.

The decedent and all other joint tenants are presumed to have contributed in-kind in accordance with their respective shares for the jointly owned property unless otherwise proven by clear and convincing evidence.

d. Benefits payable by reason of the decedent's death under any policy, plan, contract, or other arrangement, either owned by the decedent or over which the decedent had a general power of appointment or had the power to designate the surviving spouse as beneficiary, including, without limitation:
   1. Insurance on the life of the decedent.
   2. Accidental death benefits.
   3. Annuities.
   4. Employee benefits or similar arrangements.
   5. Individual retirement accounts.
   6. Pension or profit sharing plans.
   7. Deferred compensation.
   8. Any private or governmental retirement plan.

e. Property irrevocably transferred by the decedent to the extent the decedent retained the possession or enjoyment of, or the right to income from, the property for life or for any period not ascertainable without reference to the decedent's death or for any period that does not in fact end before the decedent's death, except:
   1. Property transferred for full and adequate consideration.
   2. Transfers to that the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
   3. Transfers that became irrevocable before the decedent's marriage to the surviving spouse.

   The property included in total assets is that fraction of the transferred property to which the decedent retained the right.

f. Property transferred by the decedent to the extent the decedent created a power over the property or the income from the property, which, immediately prior to death, could be exercised by the decedent in conjunction with any other person, or which could be exercised by a person who does not have a substantial interest that would be adversely affected by the exercise or nonexercise of the power, for the benefit of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except:
   1. Property transferred for full and adequate consideration.
   2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
   3. Transfers which became irrevocable before the decedent's marriage to the surviving spouse.

   The property included in total assets with respect to a power over property is that fraction of the property to which the power related.

g. Property transferred by the decedent to persons other than the surviving spouse if such transfer was made both during the one-year period immediately preceding the decedent's death and during the decedent's marriage to the surviving spouse, except:

1. Property transferred for full and adequate consideration.
2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports such gift, or other writing.
3. That part of any property transferred to any one transferee that qualified for exclusion from gift tax under section 2503 of the Code.

For purposes of this sub-subdivision, the termination of a right or interest in, or power over, property that would have been included in the total assets under sub-subdivisions b., e., or f. of this subdivision if the right, interest, or power had not terminated until the decedent's death shall be deemed to be a transfer of such property. Termination occurs when, with respect to a right or interest in property, the decedent transfers or relinquishes the right or interest; with respect to a power over property, the power terminates by exercise or release, but not by lapse or default.

If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.

(4) Total Net Assets. – The total assets reduced by year's allowances to persons other than the surviving spouse and claims. (2000-140, s. 92; 2000-178, s. 2; 2001-364, s. 4; 2001-487, s. 16; 2003-296, s. 2; 2009-368, s. 1; 2020-60, s. 1.)

§ 30-3.3: Repealed by Session Laws 2009-368, s. 1, effective July 27, 2009, and applicable to decedents dying on or after October 1, 2009.

§ 30-3.3A. Valuation of property.

(a) Basic Principles. – Unless otherwise expressly stated to the contrary in this section, the value of property shall be that property's fair market value, taking into consideration any applicable discounts. The value shall be determined as of the date of death, except for (i) property transferred to persons other than the surviving spouse described in G.S. 30-3.2(3f)g. and (ii) property transferred to the surviving spouse described in G.S. 30-3.2(3c)e. that is not held in trust, that is not life insurance, and that is not held as tenants by the entirety or some other form of ownership that passes to the surviving spouse by reason of survivorship. The value of gift property described in clauses (i) and (ii) shall be determined as the value on the date of transfer; but if the donee proves to the satisfaction of the clerk that the value on the date of disposal of the asset prior to the decedent's death is less than on the original date of transfer or that the value on the date of death is less than on the original date of transfer, then the lesser value shall be used.

(b) Certain Joint Property. – In valuing a partial interest in jointly owned property with right of survivorship, there shall be no discount taken to reflect the decedent's partial interest including, but not limited to, discounts for lack of control, ownership of a fractional interest, or lack of marketability.

(c) Certain Powers of Appointment. – In valuing property over which the decedent held a presently exercisable general power of appointment, the value includes only the property subject to the power that passes at the decedent's death, whether by exercise, release, lapse, default, or otherwise.

(d) Certain Transfers With Retained Interests. – In valuing property transferred by the decedent with a retained right of possession or enjoyment or the right to income described in G.S. 30-3.2(3f)e., only the fraction of the property to which the decedent retained a right shall be included. In valuing property in which the decedent created a power as described in G.S. 30-3.2(3f)f., the value includes, with respect to a power, the value of the property subject to the power, and the amount included in the valuation with respect to a power over the income is the value of the property that produces or produced the income; provided, however, if the power is a power over both income and property and the foregoing produces different amounts, the amount included in the valuation is the greater amount.

(e) Partial or Contingent Interest Property. – The valuation of partial and contingent property interests, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and by using a presumed rate of return of six percent (6%) of the value of the underlying property in which those interests are limited, unless upon good cause shown by one of the parties, the clerk determines that the use of such tables or rate of return is not appropriate, then the value of such interests shall be determined under subsection (f) of this section. However, in valuing partial and contingent interests passing to the surviving spouse, the following special rules apply:

(1) The value of the beneficial interest of a spouse shall be the entire fair market value of any property held in trust if the decedent was the settlor of the trust, if the trust is held for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, if the terms of the trust substantially meet the following requirements in form and content:

a. At all times during the lifetime of the surviving spouse, the trust is controlled by (i) one or more nonadverse trustees, including successor trustees, (ii) the surviving spouse as trustee, or (iii) one or more nonadverse trustees and the surviving spouse as co-trustees, including successor trustees.

b. The trustee shall distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

c. The trustee shall distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

d. Repealed by Session Laws 2025-33, s. 10.1, effective January 1, 2026.

(1a) Notwithstanding any requirements in subdivision (1) of this subsection to the contrary, the terms of the trust may authorize or require the trustee, in exercising

discretion, to take into consideration all other income, assets, and other means of support available to the surviving spouse.

(1b) A trust fails to meet the requirements of sub-subdivisions b. and c. of subdivision (1) of this subsection if the terms of the trust do not state the requirement that the trustee shall distribute the income and principal as provided in those sub-subdivisions using the terms "shall," "is required to," or other equivalent term or terms directing the trustee to distribute the income and principal. Nothing in this subdivision shall affect the ability of the trustee to exercise the discretion provided in sub-subdivisions b. and c. of subdivision (1) of this subsection with respect to the timing and amount of distributions necessary for the health, maintenance, and support of the surviving spouse.

(2) To the extent that the partial or contingent interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate upon the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage.

(3) Repealed by Session Laws 2015-205, s. 4.1, effective August 11, 2015.

(f) Method for Determining Value. – Unless otherwise stated in this Article, the value of property shall be determined as follows:

(1) The value of property passing by intestacy described in G.S. 30-3.2(3f)a. and Property Passing to Surviving Spouse, other than property held in a trust, shall be established by the good-faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse, in which cases the value of such property shall be determined pursuant to subdivision (4) of this subsection.

(2) The value of property constituting an interest in a trust shall be established by good-faith agreement of the surviving spouse, the personal representative, and the trustee, unless either (i) the surviving spouse is both the personal representative and the trustee or (ii) the clerk determines that the trustee or the personal representative may not be able to represent the trust or the estate, respectively, adversely to the surviving spouse, in which cases the value of such property shall be determined pursuant to subdivision (4) of this subsection.

(3) The value of all other property shall be established by the good-faith agreement of the surviving spouse, the personal representative, and the responsible person that received, held, or controlled such property on the date used to determine the value of such property for purposes of determining total assets, unless the clerk determines that valuation under subdivision (4) of this subsection is more appropriate.

(4) If the value of any property is not established by agreement as provided above, the parties may present evidence regarding value, which may include expert testimony, and the clerk may appoint one or more qualified and disinterested

persons to help determine the value of such property. After hearing, the clerk shall make a finding of fact of the value of each asset. (2009-368, s. 1; 2015-205, s. 4.1; 2025-33, s. 10.1.)

§ 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 filing a verified petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies. 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. – The verified petition shall be filed by the clerk upon payment of the costs assessed in G.S. 7A-307. 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, except as modified or supplemented by the following:

(1) Upon the filing of the verified petition, the petition shall be served upon the personal representative in accordance with G.S. 1A-1, Rule 4 of the Rules of Civil Procedure, without issuance of a summons. The petition shall also be served on all responsible persons as those persons become known to the petitioner in accordance with G.S. 1A-1, Rule 4 of the Rules of Civil Procedure, without issuance of a summons. The failure to serve the petition for elective share on the personal representative or any other person within the six-month period described in subsection (b) of this section shall not render the claim for elective share as being untimely filed.

(2) After service under subdivision (1) of this subsection, the petitioner, the personal representative, or any other party may cause notice of a hearing before the clerk to be served upon all parties in accordance with G.S. 1A-1, Rule 5 of the Rules of Civil Procedure. At the hearing, the clerk may set deadlines as to the gathering and sharing of information concerning total net assets and may determine any other relevant procedural matters.

(3) Within 30 days following the entry of an order resulting from the hearing described in subdivision (2) of this subsection, any party who was present at the hearing may file a responsive pleading to the petition; provided, however, that failure to respond to any averment or claim in the petition shall not be deemed an admission of that averment or claim. An extension of time to file a responsive pleading to the petition may be granted as provided by G.S. 1A-1, Rule 6 of the Rules of Civil Procedure.

(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; 2025-33, s. 10.2.)

§ 30-3.5. Satisfaction of elective share.

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

(a1) Apportionment. – The personal representative shall apportion the liability to the surviving spouse for the amount of the elective share among all responsible persons as follows:

(1) The net value of each nonspousal asset shall be determined by calculating the value of the nonspousal asset under G.S. 30-3.3A and reducing such value by that portion of the claims (including year's allowances to persons other than the surviving spouse) payable out of, charged against, or otherwise properly allocable to the nonspousal asset.

(2) Using the net value of each nonspousal asset as determined under subdivision (1) of this subsection, the personal representative shall determine each responsible person's liability to the surviving spouse by multiplying the amount of the elective share by a fraction, the numerator of which is the net value of the responsible person's nonspousal assets and the denominator of which is the net value of all of the nonspousal assets.

(a2) Recovery From Responsible Persons. – In recovering assets from responsible persons, the following rules apply:

(1) To the extent the personal representative is a responsible person, the personal representative shall satisfy its liability to the surviving spouse out of its nonspousal assets according to the following order of priority:

a. The personal representative shall satisfy its liability out of the net value of the nonspousal assets passing by intestate succession by allocating the liability proportionately among each intestate heir based on the fraction of the net value of the nonspousal assets passing by intestate succession that each intestate heir is entitled to receive.

b. If the net value of the nonspousal assets passing by intestate succession is not sufficient to satisfy the personal representative's liability in full, the personal representative shall satisfy its remaining liability out of the net value of the nonspousal assets passing as part of the decedent's residuary estate by allocating the liability proportionately among each beneficiary of the decedent's residuary estate based on the fraction of the net value of the nonspousal assets passing as part of the decedent's residuary estate that each residuary beneficiary is entitled to receive.

c. If the net value of the nonspousal assets in the residuary estate is not sufficient to satisfy the personal representative's liability in full, the personal representative shall satisfy its remaining liability by allocating the remaining liability proportionately among each other beneficiary of the decedent's will based on the fraction of the net value of the remaining nonspousal assets each other beneficiary is entitled to receive.

(2) The personal representative shall recover from each other responsible person the responsible person's liability to the surviving spouse.

(3) Each responsible person, including the personal representative in its capacity as a responsible person, may elect to satisfy its liability in full by any of the following methods:

a. Conveyance of that portion of the responsible person's nonspousal assets (or identical substitute assets), valued on the date of conveyance, sufficient to satisfy the responsible person's liability; or, if the value of the responsible person's nonspousal assets on the date of conveyance is

less than the responsible person's liability, conveyance of all of the responsible person's nonspousal assets (or identical substitute assets).

b. Payment of the liability in cash.

c. Payment of the liability in other property upon written agreement of the surviving spouse at values agreed by the surviving spouse for purposes of determining the extent of the liability satisfied.

d. Any combination of the payment methods set forth under sub-subdivision a. through d. of this subdivision, provided that the total value of assets conveyed by the responsible person equals such responsible person's liability.

(a3) Inability or Refusal to Pay. – The personal representative shall be entitled to petition the clerk of court for an order requiring any responsible person to satisfy its liability. Upon refusal of a responsible person to obey such an order, the personal representative shall be entitled to a judgment against such responsible person in the amount of the liability and to any other remedies the clerk deems appropriate. Although the responsible person shall remain primarily liable for such responsible person's liability for the elective share, the following rules apply:

(1) If the responsible person makes a gratuitous transfer, whether inter vivos or by testate or intestate succession, of all or any part of the responsible person's nonspousal assets or the proceeds thereof after the decedent's death, then the gratuitous transferee shall be liable for the amount transferred, and the personal representative shall be entitled to recover that amount from the transferee as if the transferee were the responsible person.

(2) If the responsible person is a fiduciary and makes a distribution of all or any part of the responsible person's nonspousal assets or the proceeds thereof after the decedent's death, then the distributee shall be liable for the amount transferred, and the personal representative shall be entitled to recover that amount from the distributee as if the distributee were the responsible person.

If, after exhausting all other remedies in this section, the personal representative cannot reasonably recover a responsible person's liability, then, with the approval of the clerk, the defaulting responsible person's liability shall be apportioned on a pro rata basis among the responsible persons who have not defaulted. Each nondefaulting other responsible person shall be liable for the amount of the liability apportioned to it in the same manner and to the same extent as its original liability for the elective share; provided, that each responsible person's liability shall not exceed the responsible person's proportionate share of the value of the nonspousal assets based on the values used in determining Total Net Assets. Each nondefaulting other responsible person shall be entitled to a proportionate share of any judgment against or subsequent recovery of the liability from the defaulting responsible person.

(b) Standstill Order. – After the filing of the petition demanding an elective share, the personal representative, surviving spouse, or any responsible person may request the clerk to issue an order that any responsible person not dispose of all or a portion of the decedent's Total Net Assets or the proceeds thereof pending the payment of the elective share. The decision to issue such an order shall be in the discretion of the clerk. A person who violates the standstill order may be held in civil contempt of court pursuant to Article 5A of Chapter 2 of the General Statutes. The clerk shall enter an order terminating the standstill order upon the clerk's determination that the standstill order is no longer necessary or desirable.

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

(e) Bond. – If a responsible person distributes or disposes of nonspousal assets prior to final apportionment of the elective share and expenses, the personal representative may require the responsible person or the transferee to provide a bond or other security for the responsible person's liability for payment of the elective share and apportioned expenses in the form and amount prescribed by the personal representative, with the approval of the clerk. (2000-178, s. 2; 2009-368, s. 1.)

§ 30-3.6. Waiver of rights.

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving spouse, by the surviving 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.

(b) A waiver is not enforceable if the surviving spouse proves that:

(1) The waiver was not executed voluntarily; or

(2) The surviving spouse or the surviving spouse's representative making the waiver was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure.

(c) A written waiver that would have been effective to waive a spouse's right to dissent in estates of decedents dying on or before December 31, 2000, under Article 1 of Chapter 30 of the General Statutes is effective to waive that spouse's right of elective share under this Article for estates of decedents dying on or after January 1, 2001. (2000-178, s. 2; 2003-296, s. 5; 2004-203, s. 30; 2009-368, s. 1.)