

UNOFFICIAL COPY OF HOUSE BILL

By: **Delegates**

Introduced and read first time:

Assigned to:

A BILL ENTITLED

AN ACT concerning

Estates and Trusts - Spousal Elective Share

FOR the purpose of authorizing a surviving spouse, an attorney in fact, or guardian of certain property to take an elective share of the decedent's elective estate rather than property left to the spouse by will; specifying the value of an elective estate, including the value of the decedent's probate estate and property outside the probate estate; specifying certain elements not included in an elective estate; specifying the value of certain properties included in an elective estate; specifying a method for valuing the spouse's interest in property that passes in trust for the spouse; specifying that the amount of an elective share is the greater of a certain minimum amount and an amount that is dependent on the length of the marriage between the decedent and the surviving spouse; requiring that the elective share amount be satisfied from certain recipients of property included in the elective estate in a certain order of priority; requiring that any unsatisfied balance of the elective share is to be apportioned among certain direct recipients of property in the elective estate in a certain order of priority; requiring that any amount to be satisfied from trust property is to be paid from the assets of the trust in a certain order; specifying that direct recipients and certain beneficiaries are liable to contribute toward satisfaction of the elective share; allowing certain beneficiaries and direct recipients to contribute certain property or pay certain amounts instead of paying the amount for which they are liable; specifying that the elective share is in addition to the family allowance provided under State law; requiring that, if an election to take an elective share is filed, the balance of the elective estate after the elective share is satisfied is to be administered as though the surviving spouse had predeceased the decedent; requiring a certain person to collect the elective share in the order of contribution; requiring a certain judgment to include certain costs, fees, and interests; specifying the requirements for electing to take an elective share; providing that this Act applies to decedents who die on or after a certain date; defining certain terms; making certain technical changes; and generally relating to elective shares for spouses.

BY repealing

Article - Estates and Trusts

Section 3-203, 3-204, and 3-206 through 3-208, inclusive

Annotated Code of Maryland
(2001 Replacement Volume and 2005 Supplement)

BY repealing and reenacting, without amendments,
Article - Estates and Trusts
Section 3-201 and 3-202
Annotated Code of Maryland
(2001 Replacement Volume and 2005 Supplement)

BY repealing and reenacting, with amendments,
Article - Estates and Trusts
Section 3-205 to be under the amended subtitle "Subtitle 2. Family Allowance"
Annotated Code of Maryland
(2001 Replacement Volume and 2005 Supplement)

BY adding to
Article - Estates and Trusts
Section 3-401 through 3-414 to be under the new subtitle "Subtitle 4. Spousal
Elective Share"
Annotated Code of Maryland
(2001 Replacement Volume and 2005 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
MARYLAND, That the Laws of Maryland read as follows:

Article - Estates and Trusts

Subtitle 2. Family Allowance [and Statutory Share of Surviving Spouse].

3-201.

(a) The surviving spouse is entitled to receive an allowance of \$5,000 for personal use.

(b) An allowance of \$2,500 for the use of each unmarried child of the decedent who has not attained the age of 18 years at the time of the death of the decedent shall be paid by the personal representative as provided in § 13-501 of this article.

3-202.

The estates of dower and curtesy are abolished.

[3-203.

(a) In this section, "net estate" means the property of the decedent passing by testate succession, without a deduction for State or federal estate or inheritance taxes, and reduced by:

- (1) Funeral and administration expenses;
- (2) Family allowances; and
- (3) Enforceable claims and debts against the estate.

(b) Instead of property left to the surviving spouse by will, the surviving spouse may elect to take a one-third share of the net estate if there is also a surviving issue, or a one-half share of the net estate if there is no surviving issue.

(c) The surviving spouse who makes this election may not take more than a one-half share of the net estate.

(d) For the purposes of this section, the net estate and the property allocable to a share of a surviving spouse shall be valued as of the date or dates of distribution.

(e) (1) For the purposes of this section, a surviving spouse who has elected to take against a will shall be entitled to the surviving spouse's portion of the income earned on the net estate during the period of administration based on a one-third or one-half share, whichever is applicable.

(2) If one or more distributions have been made to a surviving spouse or another person that require an adjustment in the relative interests of the beneficiaries, the applicable share shall be adjusted.]

[3-204.

The right of election of the surviving spouse is personal to him. It is not transferable and cannot be exercised subsequent to his death. If the surviving spouse is under 18 years of age or under disability, the election may be exercised by order of the court having jurisdiction of the person or property of the spouse or person under disability.]

[3-205.] 3-203.

The right of election of a surviving spouse may be waived before or after marriage by a written contract, agreement, or waiver signed by the party waiving the right of election. 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 separation or divorce, is a waiver of any right to [his] THE SPOUSE'S family allowance as well as to [his] THE SPOUSE'S elective share by each spouse in the property of the spouse, [his] THE SPOUSE'S right to letters under § 5-104 OF THIS ARTICLE, and is an irrevocable renunciation of any benefit which would pass to [him] THE SPOUSE from the other by intestate succession, by statutory share, or by virtue of the provisions of a will executed before the waiver or property settlement.

[3-206.

(a) (1) The election by a surviving spouse to take an elective share shall be made within the later of:

(i) Nine months after the date of the decedent's death; or

(ii) Six months after the first appointment of a personal representative under a will.

(2) The court may extend the time for election, before its expiration, for a period not to exceed three months at a time, upon notice given to the personal representative and for good cause shown.

(b) The surviving spouse may withdraw the election at any time before the expiration of the time for making the election to take an elective share.]

[3-207.

(a) An election to take an elective share of an estate of a decedent shall be in writing and signed by the surviving spouse or other person entitled to make the election pursuant to § 3-204, and shall be filed in the court in which the personal representative of the decedent was appointed.

(b) The election may be in this form.

I, A. B., surviving spouse of C. D., late of the County (City) of, renounce all provisions in the will of C. D. and elect to take my elective share of the decedent's estate.

.....
(Signature)]

[3-208.

(a) (1) Upon the election of the surviving spouse to take the elective share of the property of the decedent, all property or other benefits which would have passed to the surviving spouse under the will shall be treated as if the surviving spouse had died before the execution of the will.

(2) The surviving spouse and a person claiming through the surviving spouse may not receive property under the will.

(b) (1) If there is an election to take an elective share, contribution to the payment of it shall be prorated among all legatees.

(2) Instead of contributing an interest in specific property to the elective share, a legatee may pay the surviving spouse in cash, or other property acceptable to the spouse, an amount equal to the fair market value of the interest in specific property on the date the election to take an elective share was made by the spouse.

(3) Unless specifically provided in the will, a legatee is not entitled to sequestration or compensation from another legatee, or from another part of the estate of the decedent, except that an interest renounced by the surviving spouse and not included in the share of the net estate received by the surviving spouse under this section may be subject to sequestration for the benefit of individuals who are the natural objects of the bounty of the decedent, in order to avoid a substantial distortion of the intended dispositions of the testator.]

SUBTITLE 4. SPOUSAL ELECTIVE SHARE.

3-401.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) (1) "DIRECT RECIPIENT" MEANS THE DECEDENT'S PROBATE ESTATE AND ANY OTHER PERSON WHO RECEIVES PROPERTY INCLUDED IN THE ELECTIVE ESTATE BY TRANSFER FROM THE DECEDENT, INCLUDING TRANSFERS DESCRIBED IN § 3-403(8) OF THIS SUBTITLE BY RIGHT OF SURVIVORSHIP, OR BY BENEFICIARY DESIGNATION UNDER A GOVERNING INSTRUMENT.

(2) A BENEFICIARY OF AN INSURANCE POLICY ON THE DECEDENT'S LIFE, THE NET PROCEEDS OF WHICH ARE INCLUDED IN THE ELECTIVE

ESTATE, IS TREATED AS HAVING RECEIVED PROPERTY INCLUDED IN THE ELECTIVE ESTATE.

(3) IN THE CASE OF PROPERTY HELD IN TRUST, "DIRECT RECIPIENT":

(I) INCLUDES THE TRUSTEE; BUT

(II) DOES NOT INCLUDE THE BENEFICIARIES OF THE TRUST.

(C) "ELECTIVE SHARE TRUST" MEANS A TRUST WHETHER CREATED BEFORE OR AFTER OCTOBER 1, 2006, IN WHICH:

(1) THE SURVIVING SPOUSE IS ENTITLED FOR LIFE TO THE USE OF THE PROPERTY OR TO ALL OF THE INCOME PAYABLE AT LEAST AS OFTEN AS ANNUALLY;

(2) THE SURVIVING SPOUSE HAS THE RIGHT UNDER THE TERMS OF THE TRUST OR STATE LAW TO REQUIRE THE TRUSTEE TO MAKE THE PROPERTY PRODUCTIVE OR TO CONVERT IT WITHIN A REASONABLE TIME; AND

(3) DURING THE SPOUSE'S LIFE, NO PERSON OTHER THAN THE SPOUSE HAS THE POWER TO DISTRIBUTE INCOME OR PRINCIPAL TO ANYONE OTHER THAN THE SPOUSE.

[(4) NOTWITHSTANDING SUBSECTIONS (1) THROUGH (3), A TRUST IS AN ELECTIVE SHARE TRUST IF IT COMPLIES WITH THE REQUIREMENTS FOR A MARITAL DEDUCTION UNDER SECTION 2056(b)(7) OR SECTION 2523(f) OF THE INTERNAL REVENUE CODE AND THE REGULATIONS ISSUED THEREUNDER. FOR PURPOSES OF THE PRECEDING SENTENCE, IT SHALL BE PRESUMED THAT THE ELECTION REQUIRED BY SECTION 2056(b)(7) OR SECTION 2523(f) OF THE INTERNAL REVENUE CODE IS MADE WITH RESPECT TO THE TRUST, ALTHOUGH QUALIFICATION AS AN ELECTIVE SHARE TRUST IS NOT DEPENDENT ON AN ELECTION ACTUALLY BEING MADE.] [PROPOSED CHANGE TO FLORIDA LAW]

(D) (1) "GENERAL POWER OF APPOINTMENT" MEANS A POWER OF APPOINTMENT UNDER WHICH THE HOLDER OF THE POWER, WHETHER OR NOT THE HOLDER HAS THE CAPACITY TO EXERCISE IT, MAY CREATE A PRESENT OR FUTURE INTEREST IN:

(I) THE HOLDER;

(II) THE HOLDER'S ESTATE; OR

(III) THE CREDITORS OF THE HOLDER OR THE HOLDER'S ESTATE.

(2) "GENERAL POWER OF APPOINTMENT" INCLUDES A POWER TO CONSUME OR INVADE THE PRINCIPAL OF A TRUST, BUT ONLY IF THE POWER IS NOT LIMITED BY AN ASCERTAINABLE STANDARD RELATING TO THE HOLDER'S HEALTH, EDUCATION, SUPPORT, OR MAINTENANCE.

(E) "GOVERNING INSTRUMENT" MEANS A DEED, WILL, TRUST, INSURANCE OR ANNUITY POLICY, ACCOUNT WITH PAYABLE ON DEATH DESIGNATION, SECURITY REGISTERED IN BENEFICIARY FORM (TRANSFERABLE ON DEATH), PENSION, PROFIT-SHARING PLAN, RETIREMENT PLAN, OR SIMILAR BENEFIT PLAN, INSTRUMENT CREATING OR EXERCISING A POWER OF APPOINTMENT OR A POWER OF ATTORNEY, OR A DISPOSITIVE, APPOINTIVE, OR NOMINATIVE INSTRUMENT OF A SIMILAR TYPE.

(F) (1) "PAYOR" MEANS AN INSURER, BUSINESS ENTITY, EMPLOYER, GOVERNMENTAL UNIT, OR OTHER PERSON WHO IS AUTHORIZED OR OBLIGATED BY LAW OR A GOVERNING INSTRUMENT TO MAKE PAYMENTS.

(2) "PAYOR" DOES NOT INCLUDE THE DECEDENT'S PERSONAL REPRESENTATIVE OR TRUSTEE OF A TRUST CREATED BY THE DECEDENT.

(G) "PERSON" INCLUDES AN INDIVIDUAL, TRUST, ESTATE, PARTNERSHIP, ASSOCIATION, COMPANY, LIMITED LIABILITY COMPANY, AND CORPORATION.

(H) "PROBATE ESTATE" MEANS ALL PROPERTY WHEREVER LOCATED THAT IS SUBJECT TO ESTATE ADMINISTRATION OR A PROCEEDING IN ANY STATE OR THE DISTRICT OF COLUMBIA.

(I) "QUALIFYING SPECIAL NEEDS TRUST" OR "SUPPLEMENTAL NEEDS TRUST" MEANS A TRUST ESTABLISHED FOR AN ILL OR DISABLED SURVIVING SPOUSE WITH COURT APPROVAL BEFORE OR AFTER A DECEDENT'S DEATH, IF, COMMENCING ON THE DECEDENT'S DEATH:

(1) THE INCOME AND PRINCIPAL ARE DISTRIBUTABLE TO OR FOR THE BENEFIT OF THE SPOUSE FOR LIFE IN THE DISCRETION OF ONE OR MORE TRUSTEES LESS THAN HALF OF WHOM ARE INELIGIBLE FAMILY TRUSTEES. FOR PURPOSES OF THIS PARAGRAPH, INELIGIBLE FAMILY TRUSTEES INCLUDE THE DECEDENT'S GRANDPARENTS AND ANY DESCENDANTS OF THE DECEDENT'S GRANDPARENTS WHO ARE NOT ALSO DESCENDANTS OF THE SURVIVING SPOUSE; AND

(2) DURING THE SPOUSE'S LIFE, NO PERSON OTHER THAN THE SPOUSE HAS THE POWER TO DISTRIBUTE INCOME OR PRINCIPAL TO ANYONE OTHER THAN THE SPOUSE.

(3) THE REQUIREMENT FOR COURT APPROVAL SHALL NOT APPLY IF THE AGGREGATE VALUE OF ALL PROPERTY IN ALL QUALIFYING SPECIAL NEEDS TRUSTS FOR THE SPOUSE IS LESS THAN \$100,000. FOR PURPOSES OF THIS SUBSECTION, VALUE IS DETERMINED ON THE "APPLICABLE VALUATION DATE" AS DEFINED IN § 3-409(A)(2) OF THIS SUBTITLE.] [FLORIDA]

(J) "REVOCABLE TRUST" MEANS A TRUST THAT MAY BE INCLUDED IN THE ELECTIVE ESTATE UNDER § 3-403(4) OF THIS SUBTITLE.

(K) "TRANSFER IN SATISFACTION OF THE ELECTIVE SHARE" MEANS, WHETHER CREATED BEFORE OR AFTER OCTOBER 1, 2006, AN IRREVOCABLE TRANSFER BY THE DECEDENT TO AN ELECTIVE SHARE TRUST.

(L) "TRANSFER TAX VALUE" MEANS THE VALUE THE INTEREST WOULD HAVE FOR PURPOSES OF THE UNITED STATES ESTATE AND GIFT TAX LAWS IF IT PASSED WITHOUT CONSIDERATION TO AN UNRELATED PERSON ON THE APPLICABLE VALUATION DATE.

3-402.

THE SURVIVING SPOUSE OF A DECEDENT WHO DIES DOMICILED IN MARYLAND HAS THE RIGHT TO A SHARE OF THE ELECTIVE ESTATE OF THE DECEDENT AS PROVIDED IN THIS SUBTITLE, TO BE DESIGNATED THE ELECTIVE SHARE.

3-403.

EXCEPT AS PROVIDED IN § 3-404 OF THIS SUBTITLE, THE ELECTIVE ESTATE CONSISTS OF THE SUM OF THE VALUES AS DETERMINED UNDER § 3-405 OF THIS SUBTITLE OF THE FOLLOWING PROPERTY INTERESTS:

(1) THE DECEDENT'S PROBATE ESTATE;

(2) THE DECEDENT'S OWNERSHIP INTEREST IN ACCOUNTS OR SECURITIES REGISTERED IN PAYABLE ON DEATH (POD), IN TRANSFERABLE ON DEATH (TOD), IN TRUST FOR (ITF), OR CO-OWNERSHIP WITH RIGHT OF SURVIVORSHIP FORM, WITH "DECEDENT'S OWNERSHIP INTEREST" MEANING, FOR ACCOUNTS OR SECURITIES HELD IN TENANCY BY THE ENTIRETY, ONE-HALF THE VALUE OF THE ACCOUNT OR SECURITY AND, IN ALL OTHER CASES, [THAT PORTION OF THE ACCOUNTS OR SECURITIES TRACEABLE TO THE DECEDENT] [OMIT]. [THAT PORTION OF THE ACCOUNTS OR SECURITIES WHICH THE DECEDENT HAD, IMMEDIATELY BEFORE DEATH, THE RIGHT TO WITHDRAW OR USE WITHOUT THE DUTY TO ACCOUNT TO ANY PERSON.] [FLORIDA]

(3) OTHER THAN PROPERTY DESCRIBED IN PARAGRAPH (2) OF THIS SECTION, THE DECEDENT'S FRACTIONAL INTEREST IN PROPERTY, WHICH IS OBTAINED BY DIVIDING THE VALUE OF THE PROPERTY BY THE NUMBER OF TENANTS AND IS HELD BY THE DECEDENT IN JOINT TENANCY WITH RIGHT OF SURVIVORSHIP OR IN TENANCY BY THE ENTIRETY;

(4) THAT PORTION OF PROPERTY, OTHER THAN PROPERTY DESCRIBED IN PARAGRAPH (2) OR (7) OF THIS SECTION, TRANSFERRED BY THE DECEDENT TO THE EXTENT THAT AT THE TIME OF THE DECEDENT'S DEATH THE TRANSFER WAS REVOCABLE BY THE DECEDENT ALONE OR IN CONJUNCTION WITH ANY OTHER PERSON, EXCEPT A TRANSFER OF PROPERTY THAT IS REVOCABLE BY THE DECEDENT ONLY WITH THE CONSENT OF ALL PERSONS HAVING A BENEFICIAL INTEREST IN THE PROPERTY;

(5) (I) THAT PORTION OF PROPERTY, OTHER THAN PROPERTY DESCRIBED IN PARAGRAPH (3), (4), OR (7) OF THIS SECTION, TRANSFERRED BY THE DECEDENT TO THE EXTENT THAT AT THE TIME OF THE DECEDENT'S DEATH:

1. THE DECEDENT POSSESSED THE RIGHT TO, OR IN FACT ENJOYED THE POSSESSION OR USE OF, THE INCOME OR PRINCIPAL OF THE PROPERTY; OR

2. THE PRINCIPAL OF THE PROPERTY COULD, IN THE DISCRETION OF ANY PERSON OTHER THAN THE SPOUSE OF THE DECEDENT, BE DISTRIBUTED OR APPOINTED TO OR FOR THE BENEFIT OF THE DECEDENT;

(II) IN THE APPLICATION OF THIS PARAGRAPH, A RIGHT TO PAYMENTS FROM AN ANNUITY, [A UNITRUST,] [FLORIDA] OR UNDER A SIMILAR CONTRACTUAL ARRANGEMENT SHALL BE TREATED AS A RIGHT TO THAT PORTION OF THE INCOME OF THE PROPERTY NECESSARY TO EQUAL THE ANNUITY OR OTHER CONTRACTUAL PAYMENT;

(III) THE AMOUNT INCLUDED UNDER THIS PARAGRAPH:

1. WITH RESPECT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH, IS THE VALUE OF THE PORTION OF THE PROPERTY TO WHICH THE DECEDENT'S RIGHT OR ENJOYMENT RELATED, TO THE EXTENT THE PORTION PASSED TO OR FOR THE BENEFIT OF ANY PERSON OTHER THAN THE DECEDENT'S PROBATE ESTATE; AND

2. WITH RESPECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, IS THE VALUE OF THE PORTION SUBJECT TO THE DISCRETION, TO THE EXTENT THE PORTION PASSED TO OR FOR THE BENEFIT OF ANY PERSON OTHER THAN THE DECEDENT'S PROBATE ESTATE;

(IV) THIS SUBPARAGRAPH DOES NOT APPLY TO ANY PROPERTY IF THE DECEDENT'S ONLY INTERESTS IN THE PROPERTY ARE THAT:

1. THE PROPERTY COULD BE DISTRIBUTED TO OR FOR THE BENEFIT OF THE DECEDENT ONLY WITH THE CONSENT OF ALL PERSONS HAVING A BENEFICIAL INTEREST IN THE PROPERTY;

2. THE INCOME OR PRINCIPAL OF THE PROPERTY COULD BE DISTRIBUTED TO OR FOR THE BENEFIT OF THE DECEDENT ONLY THROUGH THE EXERCISE OR IN DEFAULT OF AN EXERCISE OF A GENERAL POWER OF APPOINTMENT HELD BY ANY PERSON OTHER THAN THE DECEDENT;

3. THE INCOME OR PRINCIPAL OF THE PROPERTY IS OR COULD BE DISTRIBUTED IN SATISFACTION OF THE DECEDENT'S OBLIGATION OF SUPPORT; OR

4. THE DECEDENT HAD A CONTINGENT RIGHT TO RECEIVE PRINCIPAL, OTHER THAN AT THE DISCRETION OF ANY PERSON, WHICH CONTINGENCY WAS BEYOND THE CONTROL OF THE DECEDENT AND WHICH HAD NOT IN FACT OCCURRED AT THE DECEDENT'S DEATH;

(6) THE NET PROCEEDS OF ANY POLICY OF INSURANCE ON THE DECEDENT'S LIFE;

(7) THE VALUE OF AMOUNTS PAYABLE TO OR FOR THE BENEFIT OF ANY PERSON BY REASON OF SURVIVING THE DECEDENT UNDER ANY PUBLIC OR PRIVATE PENSION, RETIREMENT, OR DEFERRED COMPENSATION PLAN, OR ANY SIMILAR ARRANGEMENT, OTHER THAN BENEFITS PAYABLE UNDER THE FEDERAL RAILROAD RETIREMENT ACT OR THE FEDERAL SOCIAL SECURITY SYSTEM. **[IN THE CASE OF A DEFINED CONTRIBUTION PLAN AS DEFINED IN § 414(I) OF THE INTERNAL REVENUE CODE OF 1986, THIS PARAGRAPH DOES NOT APPLY TO THE EXCESS, IF ANY, OF THE PROCEEDS OF ANY INSURANCE POLICY ON THE DECEDENT'S LIFE OVER THE NET CASH SURRENDER VALUE OF THE POLICY IMMEDIATELY BEFORE THE DECEDENT'S DEATH] [OMIT PER (6)];**

(8) (I) PROPERTY THAT PASSED DURING THE 2-YEAR PERIOD PRECEDING THE DECEDENT'S DEATH AS A RESULT OF A TRANSFER BY THE DECEDENT IF THE TRANSFER WAS EITHER OF THE FOLLOWING TYPES:

1. ANY PROPERTY THAT PASSED AS A RESULT OF THE TERMINATION OF A RIGHT OR INTEREST IN, OR POWER OVER, PROPERTY THAT WOULD HAVE BEEN INCLUDED IN THE ELECTIVE ESTATE UNDER PARAGRAPH (4) OR (5) OF THIS SECTION IF THE RIGHT, INTEREST, OR POWER HAD NOT TERMINATED UNTIL THE DECEDENT'S DEATH; OR

2. ANY TRANSFER OF PROPERTY TO THE EXTENT NOT OTHERWISE INCLUDED IN THE ELECTIVE ESTATE, MADE TO OR FOR THE BENEFIT OF ANY PERSON, EXCEPT:

A. ANY TRANSFER OF PROPERTY FOR MEDICAL OR EDUCATIONAL EXPENSES TO THE EXTENT IT QUALIFIES FOR EXCLUSION FROM THE UNITED STATES GIFT TAX UNDER § 2503(E) OF THE INTERNAL REVENUE CODE; AND

B. AFTER THE APPLICATION OF ITEM 1 OF THIS SUBPARAGRAPH, THAT AMOUNT OF PROPERTY TRANSFERRED TO OR FOR THE BENEFIT OF EACH DONEE DURING THE 2-YEAR PERIOD, BUT ONLY TO THE EXTENT THE TRANSFER QUALIFIES FOR EXCLUSION FROM THE UNITED STATES GIFT TAX UNDER § 2503(B) OR § 2503(C) OF THE INTERNAL REVENUE CODE;

(II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH, FOR PURPOSES OF THIS PARAGRAPH:

1. A "TERMINATION" WITH RESPECT TO A RIGHT OR INTEREST IN PROPERTY OCCURS WHEN THE DECEDENT TRANSFERS OR RELINQUISHES THE RIGHT OR INTEREST, AND, WITH RESPECT TO A POWER OVER PROPERTY, OCCURS WHEN THE POWER TERMINATES BY EXERCISE, RELEASE, LAPSE, DEFAULT, OR OTHERWISE; AND

2. A DISTRIBUTION FROM A TRUST THE INCOME OR PRINCIPAL OF WHICH IS SUBJECT TO PARAGRAPH (4), (5), OR (9) OF THIS SECTION SHALL BE TREATED AS A TRANSFER OF PROPERTY BY THE DECEDENT AND NOT AS A TERMINATION OF A RIGHT OR INTEREST IN, OR A POWER OVER, PROPERTY; AND

(III) NOTWITHSTANDING ANYTHING IN SUBPARAGRAPH (II) OF THIS PARAGRAPH TO THE CONTRARY:

1. A "TERMINATION" WITH RESPECT TO A RIGHT OR INTEREST IN PROPERTY DOES NOT OCCUR WHEN THE RIGHT OR INTEREST TERMINATES BY THE TERMS OF THE GOVERNING INSTRUMENT UNLESS THE TERMINATION IS DETERMINED BY REFERENCE TO THE DEATH OF THE DECEDENT AND THE COURT FINDS A PRINCIPAL PURPOSE FOR THE TERMS OF THE INSTRUMENT RELATING TO THE TERMINATION WAS AVOIDANCE OF THE ELECTIVE SHARE; AND

2. A DISTRIBUTION FROM A TRUST IS NOT SUBJECT TO THIS SECTION IF THE DISTRIBUTION IS REQUIRED BY THE TERMS OF THE GOVERNING INSTRUMENT UNLESS THE EVENT TRIGGERING THE DISTRIBUTION IS DETERMINED BY REFERENCE TO THE DEATH OF THE DECEDENT AND THE COURT FINDS THAT A PRINCIPAL PURPOSE OF THE TERMS OF THE GOVERNING INSTRUMENT RELATING TO THE DISTRIBUTION IS AVOIDANCE OF THE ELECTIVE SHARE; OR

(9) PROPERTY TRANSFERRED IN SATISFACTION OF THE ELECTIVE SHARE.

3-404.

(A) AN ELECTIVE ESTATE DOES NOT INCLUDE:

(1) EXCEPT FOR TRANSFERS TO AN ELECTIVE SHARE TRUST, ANY TRANSFER OF PROPERTY BY THE DECEDENT TO THE EXTENT THE TRANSFER IS IRREVOCABLE BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION OR AFTER THAT DATE BUT BEFORE THE DATE OF THE DECEDENT'S MARRIAGE TO THE SURVIVING SPOUSE;

(2) ANY TRANSFER OF PROPERTY BY THE DECEDENT TO THE EXTENT THE DECEDENT RECEIVED ADEQUATE CONSIDERATION IN MONEY OR MONEY'S WORTH FOR THE TRANSFER;

(3) ANY TRANSFER OF PROPERTY BY THE DECEDENT MADE WITH THE WRITTEN CONSENT OF THE DECEDENT'S SPOUSE. FOR THIS PURPOSE, SPOUSAL CONSENT TO SPLIT-GIFT TREATMENT UNDER THE UNITED STATES GIFT TAX LAWS DOES NOT CONSTITUTE WRITTEN CONSENT TO THE TRANSFER BY THE DECEDENT;

(4) ANY POLICY OF INSURANCE ON THE DECEDENT'S LIFE MAINTAINED IN ACCORDANCE WITH A COURT ORDER;

(5) REAL PROPERTY THAT IS COMMUNITY PROPERTY UNDER THE LAWS OF THE JURISDICTION WHERE IT IS LOCATED;

[(6) PROPERTY HELD IN A QUALIFYING SPECIAL NEEDS TRUST ON THE DATE OF THE DECEDENT'S DEATH; AND

(7) PROPERTY INCLUDED IN THE GROSS ESTATE OF THE DECEDENT FOR FEDERAL ESTATE TAX PURPOSES SOLELY BECAUSE THE DECEDENT POSSESSED A GENERAL POWER OF APPOINTMENT.] [FLORIDA]

(B) (1) IF § 3-403(1) OF THIS SUBTITLE AND ANY OTHER PARAGRAPH OF § 3-403 OF THIS SUBTITLE APPLY TO THE SAME PROPERTY INTEREST, THE AMOUNT INCLUDED IN THE ELECTIVE ESTATE UNDER OTHER PARAGRAPHS IS REDUCED BY THE AMOUNT INCLUDED UNDER § 3-403(1) OF THIS SUBTITLE.

(2) IN ALL OTHER CASES, IF MORE THAN ONE PARAGRAPH OF § 3-403 OF THIS SUBTITLE APPLIES TO A PROPERTY INTEREST, ONLY THE PARAGRAPH RESULTING IN THE LARGEST ELECTIVE ESTATE SHALL APPLY.

3-405.

FOR PURPOSES OF § 3-403 OF THIS SUBTITLE, "VALUE" MEANS:

(1) IN THE CASE OF ANY POLICY OF INSURANCE ON THE DECEDENT'S LIFE INCLUDIBLE UNDER § 3-403(4), (5), OR (6) OF THIS SUBTITLE, THE NET PROCEEDS OF THE POLICY PAYABLE BY REASON ON THE DECEDENT'S DEATH;

(2) IN THE CASE OF ANY POLICY OF INSURANCE ON THE DECEDENT'S LIFE INCLUDIBLE UNDER § 3-403(8) OF THIS SUBTITLE, THE NET CASH SURRENDER VALUE OF THE POLICY ON THE DATE OF THE TERMINATION OR TRANSFER;

(3) IN THE CASE OF AMOUNTS INCLUDIBLE UNDER § 3-403(7) OF THIS SUBTITLE, THE TRANSFER TAX VALUE OF THE AMOUNTS;

(4) IN THE CASE OF OTHER PROPERTY INCLUDED UNDER § 3-403(8) OF THIS SUBTITLE, THE FAIR MARKET VALUE OF THE PROPERTY ON THE DATE OF THE TERMINATION OR TRANSFER, COMPUTED AFTER DEDUCTING ANY MORTGAGES, LIENS, OR SECURITY INTERESTS ON THE PROPERTY AS OF THAT DATE; OR

(5) IN THE CASE OF ALL OTHER PROPERTY, THE FAIR MARKET VALUE OF THE PROPERTY ON THE DATE OF THE DECEDENT'S DEATH, COMPUTED AFTER DEDUCTING FROM THE TOTAL VALUE OF THE PROPERTY:

(I) ALL ALLOWABLE CLAIMS, ADMINISTRATION EXPENSES AND FUNERAL EXPENSES PAID OR PAYABLE FROM THE ELECTIVE ESTATE BUT WITHOUT A DEDUCTION FOR THE TAX AS DEFINED IN § 7-308(A) OF THE TAX - GENERAL ARTICLE; AND **[FLORIDA LAW DOES NOT INCLUDE ADMINISTRATION EXPENSES AND FUNERAL EXPENSES IN THIS PROVISION]**

(II) TO THE EXTENT THEY ARE NOT DEDUCTED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, ALL MORTGAGES, LIENS, OR SECURITY INTERESTS ON THE PROPERTY.

3-406.

(A) THE ELECTIVE SHARE IS THE GREATER OF THE MINIMUM ELECTIVE SHARE AS DEFINED IN SUBSECTION (B) OF THIS SECTION OR AN AMOUNT EQUAL TO A PERCENTAGE OF THE ELECTIVE ESTATE DETERMINED IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

IF THE DECEDENT AND THE SPOUSE WERE LAST MARRIED TO EACH OTHER:	THE PERCENTAGE IS:
LESS THAN 5 YEARS	10%
AT LEAST 5 YEARS BUT LESS THAN 15 YEARS	20%
AT LEAST 15 YEARS BUT LESS THAN 25 YEARS	30%
25 YEARS OR MORE	40%

(B) "MINIMUM ELECTIVE SHARE" MEANS AN AMOUNT EQUAL TO THE LESSER OF \$50,000 OR ONE-HALF OF THE ELECTIVE ESTATE.

3-407.

(A) UNLESS OTHERWISE PROVIDED IN THE DECEDENT'S WILL OR, IN THE ABSENCE OF A PROVISION IN THE DECEDENT'S WILL, IN A TRUST REFERRED TO IN THE DECEDENT'S WILL, THE FOLLOWING ARE APPLIED FIRST TO SATISFY THE ELECTIVE SHARE:

(1) TO THE EXTENT PAID TO OR FOR THE BENEFIT OF THE SURVIVING SPOUSE, THE PROCEEDS OF ANY TERM OR OTHER POLICY OF INSURANCE ON THE DECEDENT'S LIFE IF, AT THE TIME OF THE DECEDENT'S DEATH, THE POLICY WAS OWNED BY ANY PERSON OTHER THAN THE SURVIVING SPOUSE;

(2) TO THE EXTENT PAID TO OR FOR THE BENEFIT OF THE SURVIVING SPOUSE, AMOUNTS PAYABLE UNDER ANY PLAN OR ARRANGEMENT DESCRIBED IN § 3-403(7) OF THIS SUBTITLE;

(3) TO THE EXTENT PAID TO OR FOR THE BENEFIT OF THE SURVIVING SPOUSE, THE DECEDENT'S ONE-HALF OF ANY PROPERTY DESCRIBED IN § 3-404(A)(6) OF THIS SUBTITLE;

[(4) PROPERTY HELD FOR THE BENEFIT OF THE SURVIVING SPOUSE IN A QUALIFYING SPECIAL NEEDS TRUST;] [FLORIDA]

(4) PROPERTY INTERESTS INCLUDED IN THE ELECTIVE ESTATE THAT PASS OR HAVE PASSED TO OR FOR THE BENEFIT OF THE SURVIVING SPOUSE; **[INCLUDING INTERESTS THAT ARE CONTINGENT UPON MAKING THE ELECTION, BUT ONLY TO THE EXTENT THAT SUCH CONTINGENT INTERESTS DO NOT DIMINISH OTHER PROPERTY INTERESTS THAT WOULD BE APPLIED TO SATISFY THE ELECTIVE SHARE IN THE ABSENCE OF THE CONTINGENT INTERESTS]** [FLORIDA]; AND

(5) PROPERTY INTERESTS THAT WOULD HAVE SATISFIED THE ELECTIVE SHARE UNDER PARAGRAPH (1), (2), (3), OR (4) OF THIS SUBSECTION BUT WERE DISCLAIMED.

(B) IF, AFTER THE APPLICATION OF SUBSECTION (A) OF THIS SECTION, THE ELECTIVE SHARE IS NOT FULLY SATISFIED, THE UNSATISFIED BALANCE SHALL BE APPORTIONED AMONG THE DIRECT RECIPIENTS OF THE REMAINING ELECTIVE ESTATE IN THE FOLLOWING ORDER OF PRIORITY:

(1) CLASS 1 -- THE DECEDENT'S PROBATE ESTATE AND REVOCABLE TRUSTS;

(2) CLASS 2 -- RECIPIENTS OF PROPERTY INTERESTS, **[OTHER THAN PROTECTED CHARITABLE INTERESTS,]** [FLORIDA] INCLUDED IN THE ELECTIVE ESTATE UNDER § 3-403(2), (3), OR (6) OF THIS SUBTITLE AND, TO THE EXTENT THE DECEDENT HAD AT THE TIME OF DEATH THE POWER TO DESIGNATE THE RECIPIENT OF THE PROPERTY, PROPERTY INTERESTS, **[OTHER THAN PROTECTED CHARITABLE INTERESTS,]** [FLORIDA] INCLUDED UNDER § 3-403(5) AND (7) OF THIS SUBTITLE;

(3) CLASS 3 -- RECIPIENTS OF ALL OTHER PROPERTY INTERESTS, **[OTHER THAN PROTECTED CHARITABLE INTERESTS,]** [FLORIDA] INCLUDED IN THE ELECTIVE ESTATE; AND

[(4) CLASS 4 -- RECIPIENTS OF PROTECTED CHARITABLE LEAD INTERESTS, BUT ONLY TO THE EXTENT AND AT SUCH TIMES THAT CONTRIBUTION IS PERMITTED WITHOUT DISQUALIFYING THE CHARITABLE INTEREST IN THAT PROPERTY FOR A DEDUCTION UNDER THE UNITED STATES GIFT TAX LAWS.]

(5) FOR PURPOSES OF THIS SUBSECTION, A PROTECTED CHARITABLE INTEREST IS ANY INTEREST FOR WHICH A CHARITABLE DEDUCTION WITH RESPECT TO THE TRANSFER OF THE PROPERTY WAS ALLOWED OR ALLOWABLE TO THE DECEDENT OR THE DECEDENT'S SPOUSE UNDER EITHER THE UNITED STATES GIFT TAX LAWS OR THE UNITED STATES INCOME TAX LAWS. A PROTECTED CHARITABLE LEAD INTEREST IS A PROTECTED CHARITABLE INTEREST WHERE ONE OR MORE DEDUCTIBLE INTERESTS IN CHARITY PRECEDE SOME OTHER NONDEDUCTIBLE INTEREST OR INTERESTS IN THE PROPERTY.]
[PROPOSED FLORIDA LAW INCLUDES REFERENCE TO INCOME TAX LAWS]

(C) THE CONTRIBUTION REQUIRED OF THE DECEDENT'S PROBATE ESTATE AND REVOCABLE TRUSTS MAY BE MADE IN CASH OR IN KIND. IN THE APPLICATION OF THIS SUBSECTION, SUBSECTIONS (D) AND (E) OF THIS SECTION ARE TO BE APPLIED TO CHARGE CONTRIBUTION FOR THE ELECTIVE SHARE TO THE BENEFICIARIES OF THE PROBATE ESTATE AND REVOCABLE TRUSTS AS IF ALL BENEFICIARIES WERE TAKING UNDER A COMMON GOVERNING INSTRUMENT.

(D) UNLESS OTHERWISE PROVIDED IN THE DECEDENT'S WILL OR, IN THE ABSENCE OF A PROVISION IN THE DECEDENT'S WILL, IN A TRUST REFERRED TO IN THE DECEDENT'S WILL, ANY AMOUNT TO BE SATISFIED FROM THE DECEDENT'S PROBATE ESTATE, OTHER THAN FROM PROPERTY PASSING TO AN INTER VIVOS TRUST, SHALL BE PAID FROM THE ASSETS OF THE PROBATE ESTATE IN THIS ORDER:

- (1) PROPERTY NOT DISPOSED OF BY THE WILL;
- (2) PROPERTY DEVISED TO THE RESIDUARY DEVISEE OR DEVISEES;
- (3) PROPERTY NOT SPECIFICALLY OR DEMONSTRATIVELY DEVISED;

AND

- (4) PROPERTY SPECIFICALLY OR DEMONSTRATIVELY DEVISED.

(E) (1) UNLESS OTHERWISE PROVIDED IN THE TRUST INSTRUMENT, OR IN THE DECEDENT'S WILL IF THERE IS NO PROVISION IN THE TRUST INSTRUMENT, ANY AMOUNT TO BE SATISFIED FROM TRUST PROPERTY SHALL BE PAID FROM THE ASSETS OF THE TRUST IN THIS ORDER:

(I) PROPERTY OF THE RESIDUE OF THE TRUST REMAINING AFTER ALL DISTRIBUTIONS THAT ARE TO BE SATISFIED BY REFERENCE TO A SPECIFIC PROPERTY OR TYPE OF PROPERTY, FUND, OR SUM;

(II) PROPERTY THAT IS NOT TO BE DISTRIBUTED FROM SPECIFIED OR IDENTIFIED PROPERTY OR A SPECIFIED OR IDENTIFIED ITEM OF PROPERTY; AND

(III) PROPERTY THAT IS TO BE DISTRIBUTED FROM SPECIFIED OR IDENTIFIED PROPERTY OR A SPECIFIED OR IDENTIFIED ITEM OF PROPERTY.

(2) A DIRECTION IN THE DECEDENT'S WILL IS EFFECTIVE ONLY FOR REVOCABLE TRUSTS.

3-408.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "CONTRIBUTION PERCENTAGE" MEANS THE REMAINING UNSATISFIED BALANCE OF THE TRUST OR ESTATE AT THE TIME OF THE DISTRIBUTION DIVIDED BY THE VALUE OF THE TRUST OR ESTATE AS DETERMINED UNDER § 3-405 OF THIS SUBTITLE.

(3) "REMAINING UNSATISFIED BALANCE" MEANS THE AMOUNT OF LIABILITY INITIALLY APPORTIONED TO THE TRUST OR ESTATE REDUCED BY AMOUNTS OR PROPERTY PREVIOUSLY CONTRIBUTED BY ANY PERSON IN SATISFACTION OF THAT LIABILITY.

(B) (1) DIRECT RECIPIENTS OF PROPERTY INCLUDED IN THE ELECTIVE ESTATE AND THE BENEFICIARIES OF THE DECEDENT'S PROBATE ESTATE OR OF ANY TRUST THAT IS A DIRECT RECIPIENT ARE LIABLE TO CONTRIBUTE TOWARD SATISFACTION OF THE ELECTIVE SHARE.

(2) WITHIN EACH OF THE CLASSES DESCRIBED IN § 3-407(B)(2) AND (3) OF THIS SUBTITLE, EACH DIRECT RECIPIENT IS LIABLE IN AN AMOUNT EQUAL TO THE VALUE, AS DETERMINED UNDER § 3-405 OF THIS SUBTITLE OF THE PROPORTIONAL PART OF THE LIABILITY FOR ALL MEMBERS OF THE CLASS.

(3) TRUST AND PROBATE ESTATE BENEFICIARIES WHO RECEIVE A DISTRIBUTION OF PRINCIPAL AFTER THE DECEDENT'S DEATH ARE LIABLE IN AN AMOUNT EQUAL TO THE VALUE OF THE PRINCIPAL DISTRIBUTED TO THEM MULTIPLIED BY THE CONTRIBUTION PERCENTAGE OF THE DISTRIBUTING TRUST OR ESTATE.

(C) (1) INSTEAD OF PAYING THE AMOUNT FOR WHICH THEY ARE LIABLE, BENEFICIARIES WHO HAVE RECEIVED A DISTRIBUTION OF PROPERTY INCLUDED IN THE ELECTIVE ESTATE AND DIRECT RECIPIENTS OTHER THAN THE DECEDENT'S PROBATE ESTATE OR REVOCABLE TRUSTS MAY:

(I) CONTRIBUTE A PROPORTIONAL PART OF ALL PROPERTY RECEIVED; OR

(II) WITH RESPECT TO ANY PROPERTY INTEREST RECEIVED BEFORE THE DATE OF THE COURT'S ORDER OF CONTRIBUTION:

1. CONTRIBUTE ALL OF THE PROPERTY; OR

2. IF THE PROPERTY HAS BEEN SOLD OR EXCHANGED PRIOR TO THE DATE ON WHICH THE SPOUSE'S ELECTION IS FILED, PAY AN AMOUNT EQUAL TO THE VALUE OF THE PROPERTY, LESS REASONABLE COSTS OF SALE, ON THE DATE IT WAS SOLD OR EXCHANGED.

(2) IN THE APPLICATION OF PARAGRAPH (1) OF THIS SUBSECTION, THE PROPORTIONAL PART OF ALL PROPERTY RECEIVED IS DETERMINED SEPARATELY FOR EACH CLASS OF PRIORITY UNDER § 3-407(B) OF THIS SUBTITLE.

(D) IF A PERSON PAYS THE VALUE OF THE PROPERTY ON THE DATE OF A SALE OR EXCHANGE OR CONTRIBUTES ALL OF THE PROPERTY RECEIVED, AS PROVIDED IN SUBSECTION (C)(1)(II) OF THIS SECTION:

(1) NO FURTHER CONTRIBUTION TOWARD SATISFACTION OF THE ELECTIVE SHARE SHALL BE REQUIRED WITH RESPECT TO SUCH PROPERTY; AND

(2) ANY UNSATISFIED CONTRIBUTION IS TREATED AS ADDITIONAL UNSATISFIED BALANCE AND REAPPORTIONED TO OTHER RECIPIENTS AS PROVIDED IN THIS SECTION AND § 3-407 OF THIS SUBTITLE.

(E) IF ANY PROVISION OF § 3-403 OR § 3-407 OF THIS SUBTITLE IS PREEMPTED BY FEDERAL LAW WITH RESPECT TO A PAYMENT, AN ITEM OF PROPERTY, OR ANY OTHER BENEFIT INCLUDED IN THE ELECTIVE ESTATE, A PERSON WHO, NOT FOR VALUE, RECEIVES THE PAYMENT, ITEM OF PROPERTY, OR ANY OTHER BENEFIT IS OBLIGATED TO RETURN THE PAYMENT, ITEM OF PROPERTY, OR BENEFIT, OR IS PERSONALLY LIABLE FOR THE AMOUNT OF THE PAYMENT OR THE VALUE OF THAT ITEM OF PROPERTY OR BENEFIT, AS PROVIDED IN §§ 3-403 AND 3-407 OF THIS SUBTITLE, TO THE PERSON WHO WOULD HAVE BEEN ENTITLED TO IT WERE THAT SECTION OR PART OF THAT SECTION NOT PREEMPTED.

3-409.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "APPLICABLE VALUATION DATE" MEANS:

(I) IN THE CASE OF TRANSFERS IN SATISFACTION OF THE ELECTIVE SHARE, THE DATE OF THE DECEDENT'S DEATH;

[(II) IN THE CASE OF PROPERTY HELD IN A QUALIFYING SPECIAL NEEDS TRUST ON THE DATE OF THE DECEDENT'S DEATH, THE DATE OF THE DECEDENT'S DEATH;] [FLORIDA]

(III) IN THE CASE OF OTHER PROPERTY IRREVOCABLY TRANSFERRED TO OR FOR THE BENEFIT OF THE SURVIVING SPOUSE DURING THE DECEDENT'S LIFE, THE DATE OF THE TRANSFER;

(IV) IN THE CASE OF PROPERTY DISTRIBUTED TO THE SURVIVING SPOUSE BY THE PERSONAL REPRESENTATIVE, THE DATE OF DISTRIBUTION;

(V) EXCEPT AS PROVIDED IN ITEMS (I) AND (II) OF THIS PARAGRAPH, IN THE CASE OF PROPERTY PASSING IN TRUST FOR THE SURVIVING SPOUSE, THE DATE OR DATES THE TRUST IS FUNDED IN SATISFACTION OF THE ELECTIVE SHARE;

(VI) IN THE CASE OF PROPERTY DESCRIBED IN § 3-403(2) AND (3) OF THIS SUBTITLE, THE DATE OF THE DECEDENT'S DEATH;

(VII) IN THE CASE OF PROCEEDS OF ANY POLICY OF INSURANCE PAYABLE TO THE SURVIVING SPOUSE, THE DATE OF THE DECEDENT'S DEATH;

(VIII) IN THE CASE OF AMOUNTS PAYABLE TO THE SURVIVING SPOUSE UNDER ANY PLAN OR ARRANGEMENT DESCRIBED IN § 3-403(7) OF THIS SUBTITLE, THE DATE OF THE DECEDENT'S DEATH; AND

(IX) IN ALL OTHER CASES, THE DATE OF THE DECEDENT'S DEATH OR THE DATE THE SURVIVING SPOUSE FIRST COMES INTO POSSESSION OF THE PROPERTY, WHICHEVER OCCURS LATER.

(3) (I) "QUALIFYING POWER OF APPOINTMENT" MEANS A GENERAL POWER OF APPOINTMENT THAT IS EXERCISABLE ALONE AND IN ALL EVENTS BY THE DECEDENT'S SPOUSE IN FAVOR OF THE SPOUSE OR THE SPOUSE'S ESTATE.

(II) FOR THIS PURPOSE, A GENERAL POWER TO APPOINT BY WILL IS A QUALIFYING POWER OF APPOINTMENT IF THE POWER MAY BE EXERCISED BY THE SPOUSE IN FAVOR OF THE SPOUSE'S ESTATE WITHOUT THE CONSENT OF ANY OTHER PERSON.

(4) (I) "QUALIFYING INVASION POWER" MEANS A POWER HELD BY THE SURVIVING SPOUSE OR THE TRUSTEE OF AN ELECTIVE SHARE TRUST TO INVADE TRUST PRINCIPAL FOR THE HEALTH, SUPPORT, AND MAINTENANCE OF THE SPOUSE.

(II) THE POWER MAY, BUT NEED NOT, PROVIDE THAT THE OTHER RESOURCES OF THE SPOUSE ARE TO BE TAKEN INTO ACCOUNT IN ANY EXERCISE OF THE POWER.

(B) (1) EXCEPT AS PROVIDED IN THIS SUBSECTION, THE VALUE OF PROPERTY FOR PURPOSES OF § 3-407 OF THIS SUBTITLE IS THE FAIR MARKET VALUE OF THE PROPERTY ON THE APPLICABLE VALUATION DATE.

(2) IF THE SURVIVING SPOUSE HAS A LIFE INTEREST IN PROPERTY NOT IN TRUST THAT ENTITLES THE SPOUSE TO THE USE OF THE PROPERTY FOR LIFE, THE

VALUE OF THE SPOUSE'S INTEREST IS ONE-HALF OF THE VALUE OF THE PROPERTY ON THE APPLICABLE VALUATION DATE.

(3) IF THE SURVIVING SPOUSE HAS AN INTEREST IN A TRUST OR PORTION OF A TRUST THAT MEETS THE REQUIREMENTS OF AN ELECTIVE SHARE TRUST, THE VALUE OF THE SPOUSE'S INTEREST IS A PERCENTAGE OF THE VALUE OF THE PRINCIPAL OF THE TRUST OR PORTION OF A TRUST ON THE APPLICABLE VALUATION DATE AS FOLLOWS:

(I) 100%, IF THE TRUST INSTRUMENT INCLUDES BOTH A QUALIFYING INVASION POWER AND A QUALIFYING POWER OF APPOINTMENT;

(II) 80%, IF THE TRUST INSTRUMENT INCLUDES A QUALIFYING INVASION POWER BUT NO QUALIFYING POWER OF APPOINTMENT; AND

(III) 50% IN ALL OTHER CASES.

[(4) IF THE SURVIVING SPOUSE IS A BENEFICIARY OF A TRUST, OR PORTION OF A TRUST, WHICH MEETS THE REQUIREMENTS OF A QUALIFYING SPECIAL NEEDS TRUST, THE VALUE OF THE PRINCIPAL OF THE TRUST, OR TRUST PORTION, ON THE APPLICABLE VALUATION DATE.] [FLORIDA]

(5) IF THE SURVIVING SPOUSE HAS AN INTEREST IN A TRUST THAT DOES NOT MEET THE REQUIREMENTS OF AN ELECTIVE SHARE TRUST, THE VALUE OF THE SPOUSE'S INTEREST IS THE TRANSFER TAX VALUE OF THE INTEREST; PROVIDED, THE AGGREGATE VALUE OF ALL OF THE SPOUSE'S INTERESTS IN THE TRUST SHALL NOT EXCEED ONE-HALF OF THE VALUE OF THE TRUST PRINCIPAL ON THE APPLICABLE VALUATION DATE.

(6) IN THE CASE OF ANY POLICY OF INSURANCE ON THE DECEDENT'S LIFE THE PROCEEDS OF WHICH ARE PAYABLE OUTRIGHT OR TO A TRUST DESCRIBED IN PARAGRAPH (3), (4) OR (5) OF THIS SUBSECTION, THE VALUE OF THE POLICY FOR PURPOSES OF § 3-407 OF THIS SUBTITLE AND PARAGRAPHS (3), (4) AND (5) OF THIS SUBSECTION IS THE NET PROCEEDS.

(6) IN THE CASE OF A RIGHT TO ONE OR MORE PAYMENTS FROM AN ANNUITY OR UNDER A SIMILAR CONTRACTUAL ARRANGEMENT OR UNDER ANY PLAN OR ARRANGEMENT DESCRIBED IN § 3-403(7) OF THIS SUBTITLE, THE VALUE OF THE RIGHT TO PAYMENTS FOR PURPOSES OF § 3-407 OF THIS SUBTITLE AND PARAGRAPHS (3), (4) AND (5) OF THIS SUBSECTION IS THE TRANSFER TAX VALUE OF THE RIGHT ON THE APPLICABLE VALUATION DATE.

3-410.

IF AN ELECTION IS FILED, THE BALANCE OF THE ELECTIVE ESTATE, AFTER THE APPLICATION OF § 3-414(A) OF THIS SUBTITLE, SHALL BE ADMINISTERED AS THOUGH THE SURVIVING SPOUSE HAD PREDECEASED THE DECEDENT.

3-411.

ALTHOUGH A PROPERTY INTEREST IS INCLUDED IN THE DECEDENT'S ELECTIVE ESTATE UNDER § 3-403(2) THROUGH (8) OF THIS SUBTITLE, A PAYOR OR OTHER THIRD PARTY IS NOT LIABLE FOR PAYING, DISTRIBUTING, OR TRANSFERRING THE PROPERTY TO A BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT, OR

FOR TAKING ANY OTHER ACTION IN GOOD FAITH RELIANCE ON THE VALIDITY OF A GOVERNING INSTRUMENT.

3-412.

(A) THE RIGHT OF ELECTION MAY BE EXERCISED:

(1) BY THE SURVIVING SPOUSE; OR

(2) WITH APPROVAL OF THE COURT HAVING JURISDICTION OF THE PROBATE PROCEEDING, BY AN ATTORNEY IN FACT OR GUARDIAN OF THE PROPERTY OF THE SURVIVING SPOUSE. THE COURT SHALL DETERMINE THE ELECTION AS THE BEST INTERESTS OF THE SURVIVING SPOUSE, DURING THE SPOUSE'S PROBABLE LIFETIME, REQUIRE.

3-413.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE ELECTION MUST BE FILED WITHIN THE EARLIER OF 6 MONTHS OF THE DATE OF THE FIRST PUBLICATION OF NOTICE OF ADMINISTRATION OR 2 YEARS AFTER THE DATE OF THE DECEDENT'S DEATH.

(B) (1) WITHIN THE PERIOD PROVIDED IN SUBSECTION (A) OF THIS SECTION, THE SURVIVING SPOUSE OR AN ATTORNEY IN FACT OR GUARDIAN OF THE PROPERTY OF THE SURVIVING SPOUSE MAY PETITION THE COURT FOR AN EXTENSION OF TIME FOR MAKING AN ELECTION.

(2) AFTER NOTICE AND HEARING, THE COURT FOR GOOD CAUSE SHOWN MAY EXTEND THE TIME FOR ELECTION.

(3) IF THE COURT GRANTS THE PETITION FOR AN EXTENSION, THE ELECTION SHALL BE FILED WITHIN THE TIME ALLOWED BY THE EXTENSION.

(C) (1) THE SURVIVING SPOUSE OR AN ATTORNEY IN FACT, GUARDIAN OF THE PROPERTY, OR PERSONAL REPRESENTATIVE OF THE SURVIVING SPOUSE MAY WITHDRAW AN ELECTION AT ANY TIME WITHIN 8 MONTHS OF THE DECEDENT'S DEATH AND BEFORE THE COURT'S ORDER OF CONTRIBUTION.

(2) IF AN ELECTION IS WITHDRAWN, THE COURT MAY ASSESS ATTORNEY'S FEES AND COSTS AGAINST THE SURVIVING SPOUSE OR THE SPOUSE'S ESTATE.

(D) A PETITION FOR AN EXTENSION OF THE TIME FOR MAKING THE ELECTION OR FOR APPROVAL TO MAKE THE ELECTION SHALL TOLL THE TIME FOR MAKING THE ELECTION.

3-414.

(A) (1) THE COURT SHALL DETERMINE THE ELECTIVE SHARE AND SHALL ORDER CONTRIBUTION.

(2) A FINAL ORDER OF CONTRIBUTION IS ENFORCEABLE IN PROCEEDINGS IN ANY COURT OF GENERAL JURISDICTION.

(B) (1) THE SURVIVING SPOUSE, AN ATTORNEY IN FACT OR GUARDIAN OF THE PROPERTY OF THE SURVIVING SPOUSE UNDER § 3-412 OF THIS SUBTITLE, OR THE PERSONAL REPRESENTATIVE OF A SURVIVING SPOUSE WHO DIES FOLLOWING A VALID ELECTION UNDER THIS SUBTITLE SHALL COLLECT THE ELECTIVE SHARE AS PROVIDED IN THE ORDER OF CONTRIBUTION.

(2) IF THE SURVIVING SPOUSE OR REPRESENTATIVE OF THE SURVIVING SPOUSE BRINGS AN ACTION TO ENFORCE AN ORDER OF CONTRIBUTION, THE JUDGMENT SHALL INCLUDE THE SURVIVING SPOUSE'S COSTS, REASONABLE ATTORNEY'S FEES, AND REASONABLE INTEREST AS DETERMINED BY THE COURT.

[NOTE: FLORIDA LAW REQUIRES THE PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE TO COLLECT THE CONTRIBUTION TO SATISFY THE ELECTIVE SHARE, WHILE MARYLAND LAW REQUIRES THE SURVIVING SPOUSE TO COLLECT THE CONTRIBUTION.]

[NOTE: FLORIDA LAW

SECTION 2. AND BE IT FURTHER ENACTED, That this Act applies to all decedants who die on or after October 1, 2006. The law in effect on September 30, 2006, applies to all decedents who die before October 1, 2006.

SECTION 3. AND BE IT FURTHER ENACTED, That a waiver of elective share rights before the effective date of this Act may not be affected by the passage of this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2000.

[NOTE: FLORIDA LAW INCLUDES ADDITIONAL TRANSITIONAL RULES.]

[NOTE: FLORIDA ALSO ENACTED THE UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT.]