

Article 8.

Election to Take Life Interest in Lieu of Intestate Share.

§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.

(a) Except as provided in this subsection, in lieu of the intestate share provided in G.S. 29-14 or G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who has petitioned for an elective share is entitled to take as the surviving spouse's intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture. The surviving spouse is not entitled to take a life estate in any of the following circumstances:

- (1) The surviving spouse has waived the surviving spouse's rights by joining with the other spouse in a conveyance of the real estate.
- (1a) The surviving spouse has waived the right to take a life estate in lieu of an intestate or elective share by an express written waiver.
- (2) The surviving spouse has waived, released, or conveyed the surviving spouse's interest in the real estate in accordance with G.S. 52-10.
- (3) The surviving spouse was not required by law to join in a conveyance of the real estate in order to bar the elective life estate.
- (3a) The surviving spouse has executed a written declaration permitting the deceased spouse to convey or encumber the real estate without the consent or joinder of the surviving spouse.
- (3b) The real estate in which the deceased spouse had an interest was either apportioned to or sold to another person in a partition proceeding initiated before the deceased spouse's death.
- (4) The surviving spouse is otherwise not legally entitled to the election provided in this section.

(b) The surviving spouse may elect to take a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if the dwelling house was owned by the deceased spouse at the time of the deceased spouse's death, together with the outbuildings, improvements and easements thereunto belonging or appertaining, and lands upon which situated and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings therein, despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a) of this section. If the value of a life estate in the dwelling house is less than the value of a life estate in one-third in value of all the real estate, the surviving spouse may elect to take a life estate in the dwelling and a life estate in such other real estate as to make the aggregate life estate of the surviving spouse equal to a life estate in one-third in value of all the real estate.

(c) The election provided for in subsection (a) of this section shall be made by the filing of a petition in accordance with Article 2 of Chapter 28A of the General Statutes (i) with the clerk of the superior court of the county in which the administration of the estate is pending or (ii) if no administration is pending, then with the clerk of the superior court of any county in which the administration of the estate could be commenced, together with the recording of a notice indicating the county and file number of the clerk's filing with the register of deeds in every county where real property to be claimed under the filing is located. The election shall be made prior to the following applicable periods:

- (1) In case of testacy, the shorter of (i) within 12 months of the date of death of the deceased spouse if letters testamentary are not issued within that period, or (ii) within one month after the expiration of the time limit for filing a claim for elective share if letters have been issued.

- (2) In case of intestacy, the shorter of (i) within 12 months after the date of death of the deceased spouse if letters of administration are not issued within that period, or (ii) within one month after the expiration of the time limit for filing claims against the estate, if letters have been issued.
- (3) Repealed by Session Laws 2011-344, s. 5, effective January 1, 2012.
- (4) If litigation that affects the share of the surviving spouse in the estate is pending, including a pending petition for determination of an elective share, then within such reasonable time as may be allowed by written order of the clerk of the superior court.

Nothing in this subsection extends the period of time for a surviving spouse to petition for an elective share under Article 1A of Chapter 30 of the General Statutes.

(c1) The petition shall do all of the following:

- (1) Be directed to the clerk with whom filed.
- (2) State that the surviving spouse making the petition elects to take under this section rather than under the provisions of G.S. 29-14, 29-21, or 30-3.1, as applicable.
- (3) Set forth the names of all heirs, devisees, personal representatives and all other persons in possession of or claiming an estate or an interest in the property described in subsection (a) of this section.
- (4) Request the allotment of the life estate provided for in subsection (a) of this section.

(c2) The petition may be filed in person, or by attorney authorized in a writing executed and duly acknowledged by the surviving spouse and attested by at least one witness. If the surviving spouse is a minor or an incompetent, the petition may be executed and filed by a general guardian or by the guardian of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the petition may be executed and filed by a guardian ad litem appointed by the clerk. The petition, whether in person or by attorney, shall be filed as a record of the court, and a summons together with a copy of the petition shall be served upon each of the interested persons named in the petition, in accordance with G.S. 1A-1, Rule 4.

(d) In case of election to take a life estate in lieu of an intestate share or elective share, as provided in either G.S. 29-14, 29-21, or 30-3.1, the clerk of superior court, with whom the petition has been filed, shall summon and appoint a jury of three disinterested persons who being first duly sworn shall promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) of this section and make a final report of this action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after the summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse shall have been allotted and set aside a life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and recorded in the office of the register of deeds of each county in which any part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for in this section, the rules of procedure relating to partition proceedings apply except insofar as the rules would be inconsistent with the provisions of this section. A determination of the life estate under this section may be appealed in accordance with G.S. 1-301.3.

(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section are subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

- (1) By a mortgage or deed of trust in which the surviving spouse has waived the surviving spouse's rights by joining with the other spouse in the making thereof.

- (2) By a mortgage or deed of trust given by the deceased spouse to secure a loan, the proceeds of which were used to pay all or a portion of the purchase price of the encumbered real property, regardless of whether the secured party is the seller of the real property or a third-party lender, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage.
- (3) By a mortgage or deed of trust made prior to the marriage.
- (4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.
- (5) By a mortgage or deed of trust on property with respect to which the elective life estate provided for in this section does not apply as provided in subsection (a) of this section.

(h) If no election is made in the manner and within the time provided for in subsection (c) of this section, the surviving spouse shall be conclusively deemed to have waived the surviving spouse's right to elect to take under the provisions of this section, and any interest which the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section shall terminate. (1959, c. 879, s. 1; 1961, c. 958, ss. 4-8; 1965, c. 848; 1997-456, s. 27; 2000-178, s. 3; 2011-284, s. 22; 2011-344, s. 5; 2020-23, s. 17.)