



News & Trending

PUBLICATIONS & ALERTS

ELECTIVE SHARE CHANGES MAY REQUIRE ESTATE PLANNING UPDATES

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Effective October 1, 2013, the elective share rules for persons who die domiciled in North Carolina have been simplified, but for many married couples the simplification will mean a substantial change in the property rights of a surviving spouse.

The “elective share” is the amount that a deceased person’s surviving spouse can elect to receive from the decedent’s estate if the decedent’s estate planning provides less to the surviving spouse. For example, if a husband leaves less than the elective share amount to his wife by his will or otherwise, the surviving spouse may elect to “trump” the husband’s plan and receive from his estate or other property the elective share amount provided by North Carolina law (less the value of what the husband did leave for her).

Under the elective share rules that applied before October 1, 2013, a surviving spouse’s share was based on the number of surviving children or other lineal descendants the decedent had, and it was further reduced by half if all of the following were true: (1) the surviving spouse was not the first spouse of the decedent; (2) the decedent had children who were not the children of the surviving spouse; and (3) the decedent and the surviving spouse had no children together.

As of October 1, 2013, the elective share is calculated based only upon the length of the marriage, as follows:

If the surviving spouse was married to the decedent for:

Then the elective share amount is:

Less than five years

Fifteen percent (15%)

At least five but less than ten years

Twenty-five percent (25%)

At least ten but less than fifteen years

Thirty-three percent (33%)

Fifteen years or more

Fifty percent (50%)

There is no adjustment based on the number of children or any other factor.

The most dramatic changes to the elective share calculation under the new rules will apply to individuals who are married to a second or successive spouse and who only have children from a prior marriage. For these individuals, the surviving spouse's share under the old rules might have been as low as one-sixth (1/6) (e.g., if the deceased spouse had two or more children from a prior marriage). Under the new rules, such a surviving spouse's minimum share in all cases is fifteen percent (15%), and if the marriage was at least five years in duration, the surviving spouse's share will be higher, as shown in the chart above.

Other scenarios also yield significant changes in the elective share, as shown below:

Sample Scenario

Elective Share under Old Rules

Elective Share under New Rules

First marriage, four years in duration, no children

Fifty percent (50%)

Fifteen percent (15%)

Second marriage, sixteen years in duration, one child from first marriage, one child from second marriage

One-third (33.3333%)

Fifty percent (50%)

Second marriage, eleven years in duration, one child from first marriage

Twenty-five percent (25%)

Thirty-three percent (33%)

Individuals whose estate plans were prepared to take into account the elective share under the old law should review their plans. Some of these individuals may wish to revise their plans to take into account the elective share rules under current law. North Carolina law applies the elective share calculation not only to the decedent's property passing under his or her will, but also to certain other property in which the decedent had an interest during his or her lifetime. As a result, planning to take the elective share into account can be complex.

If you question whether or not your estate plan is well suited to meet your needs under the new elective share rules, please contact your Smith Anderson [trust and estate planning](#) attorney.

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