

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(a) Repealed by Session Laws 2009, c. 368, s. 1, effective August 27, 2009, and applicable to decedents dying on or after October 1, 2009.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