SPOUSAL RIGHTS IN PROBATE

A spouse who survives the death of a Minnesota decedent will have a number of statutory rights which may provide financial resources to the surviving spouse over and above those that may be available to the spouse pursuant to the decedent’s Will, or the laws of intestate succession. However, certain documents must be prepared, filed, and served upon various parties within specified time limits in order for the surviving spouse to enjoy such statutory rights. Therefore, it is important to promptly consult with a Minnesota attorney in order to exercise such rights.

Intestate Succession

If a Minnesota decedent dies without a will, owning property in Minnesota which is not subject to:

- homestead rights,
- exempt property rights,
- family maintenance allowance rights,
- elective share rights,
- joint tenancy,
- a payable on death beneficiary designation, or
- other transfer on death provision, the spouse has a right to an “Intestate Share.”

Under Minnesota law, the intestate share of the surviving spouse will vary depending on the identity of those persons, if any, who are descended:

- from the decedent, and
- from the surviving spouse.

(i) No Surviving Descendants: If the decedent has no surviving descendents, the share of the surviving spouse would be the entire intestate estate.

(ii) All Joint Descendants: Alternatively, if:
- all of the decedent’s surviving descendents were also descended from the surviving spouse, and
the surviving spouse has no other descendent who survives the decedent, then the share of the surviving spouse would also be the entire intestate estate.

(iii) If all the Descendants Are Not Related: (i.e., if all of the decedent’s surviving descendents were also descended from the surviving spouse, but the surviving spouse has at least one surviving descendent who was not also descended from the decedent, then the share of the surviving spouse would be:
- the first $150,000 of the intestate estate, plus
- one-half of the balance of the intestate estate, and the decedent’s descendents would be entitled to the remainder of the intestate estate.
Likewise, if at least one of the decedent’s surviving descendents was not descended from the surviving spouse, then the share of the surviving spouse would be:

- the first $150,000 of the *intestate estate*, plus
- one-half of the balance of the *intestate estate*,

and the decedent’s descendents would be entitled to the remainder of the *intestate estate*.

*Put another way, if either the decedent, or the surviving spouse, has descendents who were not descended from the other spouse, then the share of the surviving spouse would be as identified in the preceding paragraph.*

**The Elective Share**

A surviving spouse may have a statutory right for a limited period of time after the decedent’s death, to elect to receive a certain percentage - of an amount determined pursuant to a statutory formula (the “*augmented estate*.”) Augmented estate includes all probate and non-probate assets. This *elective share* right is designed to protect a surviving spouse from being:

- completely disinherited by the decedent spouse, and
- left without any share of the family assets.

The *elective share* right to a percentage of the “*augmented estate*” will vary from 3% to 50% depending on the length of the marriage.

**The Homestead:** A surviving spouse has a statutory right - for a limited period of time after the decedent’s death - to elect to receive certain rights in the decedent’s homestead, including a manufactured home which is the family residence.

(i) No Surviving Descendants: If a decedent is not survived by any descendents, the surviving spouse would be entitled to receive a fee ownership interest in the entire homestead.

(ii) At Least One Surviving Descendent: However, if a decedent is survived by a spouse and one or more descendents:

- the surviving spouse would be entitled to receive a life estate in the Homestead, and
- the decedent’s descendents (the “*remainder persons*”), would be entitled to equally share a remainder interest in the Homestead.

(iii) Life Estate Interest: A life estate will provide the surviving spouse with:

- the right to live in the Homestead until his or her death, and
- a certain percentage of the sale proceeds upon any sale prior to the death of the surviving spouse - which percentage will decline over time.

However, during the surviving spouse’s lifetime, he or she would be responsible for paying the property taxes, insurance, maintenance expenses, and utilities with respect to the Homestead.
(iv) Remainder Interest: Upon the death of the surviving spouse, the life estate interest would terminate, and the title to the Homestead would be completely vested in the remainder persons - upon the filing of:

- a certified copy of a death certificate which identified the death of the surviving spouse, and
- an Affidavit of Survivorship identifying those remainder persons who survived the spouse’s death.

However, the interests of the remainder persons in the Homestead would be subject to any Medical Assistance lien which was effective against the life estate interest of the surviving spouse.

**The Family Allowance:** The surviving spouse will have the right to receive a support and maintenance “family allowance” from the decedent’s estate during the period of estate administration.

**Supplemental in Nature**

The family allowance is a significant right which surviving spouses have in every estate, and is in addition to the surviving spouse’s rights in:

- any homestead,
- any exempt property,
- any assets to be received by Will or pursuant to the laws of intestacy, and
- any assets to be received pursuant to an elective share.

**Term Payable:** The family allowance is payable to the surviving spouse:

1. for one year if the estate is inadequate to discharge allowed claims (insolvent); or
2. for 18 months if the estate is adequate to discharge allowed claims (solvent).

**Determination of Amount:** The personal representative has the power to determine the amount of the family allowance which is to be paid to a surviving spouse, in an amount not to exceed $1,500 per month. However, either the Personal Representative, or the surviving spouse, can petition the court for payment of a family allowance in an amount in excess of $1,500 per month.

**Priority for Payment.** The family allowance as properly determined has priority for payment ahead of all other debts and estate obligations, including probate attorney fees, court costs, and even funeral expenses.
The Exempt Property Election

In addition to:

- the homestead,
- the family allowance,
- any assets to be received by Will or pursuant to the laws of intestacy, and
- any assets to be received pursuant to an elective share, the surviving spouse will be entitled to receive:
  - personal property not exceeding $10,000 in value, in excess of any security interests, in household furniture, furnishings, appliances, personal effects - subject to an award of sentimental value property in favor of the decedent’s children - or other personal property, plus
  - one automobile - without regard to value,

all of which will be exempt from the decedent’s creditors.