Gerald T. Noel, Jr. *Legislative Service Commission*

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Sen. Cupp

BILL SUMMARY

- Provides that under the laws regarding intestate succession, when a person dies without a will and the person is survived by a spouse and one or more children of the decedent or the children's lineal descendants and all of those children also are the children of the surviving spouse, the surviving spouse takes the entire intestate estate.

- Provides that under the laws regarding intestate succession, when a person dies without a will and the person is survived by a spouse and one child of the decedent or the child's lineal descendants and the surviving spouse is not the natural or adoptive parent of the child, the spouse takes the first $20,000 plus one-half of the balance of the intestate estate, and the child or the child's lineal descendants take the remainder per stirpes.

- Provides that under the laws regarding intestate succession, when a person dies without a will and the person is survived by a spouse and more than one child or their lineal descendants, and the spouse is the natural or adoptive parent of one, but not all, of the children, the spouse takes the first $60,000, or, if the spouse is the natural or adoptive parent of none of the children, the first $20,000, plus one-third of the balance of the intestate estate, and the children take the remainder equally, with the lineal descendants of any deceased child taking per stirpes

- Repeals existing provisions permitting a surviving spouse to elect to take against the deceased spouse's bill and to take the surviving spouse's intestate share of the estate and the effects of the election, and replaces these repealed provisions with an authorization for a surviving spouse to elect to take against the deceased spouse's will and to take a percentage of the deceased spouse's augmented estate that is based on the duration of the surviving spouse's marriage to the deceased spouse.

- Specifies how the "augmented estate" of the surviving spouse is to be calculated.

- Enacts procedures for making the election and determining the elective share.

- Provides how a person may waive the right of election and to subsequently contest the waiver.

- Requires an action to set aside an antenuptial agreement, separation agreement, or waiver of the surviving spouse's right to take an elective share, to an allowance for support, to remain in the mansion house, or right to an automobile, watercraft, and outboard motor to be commenced within six months after the date of death of the decedent.

- Provides protections for persons for transferring assets that are included in a decedent's augmented estate.

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CONTENT AND OPERATION

Overview

Existing law specifies how the probate estate of a person who dies without a will is to be divided between the decedent's surviving spouse and the decedent's children. Existing law also permits a surviving spouse to elect to take against the deceased spouse's will and to take as if there was no will. The bill amends the provisions specifying how the probate estate of a person who dies without a will is to be divided between the decedent's surviving spouse and the decedent's children, enacts provisions that permit the surviving spouse to elect to take against the will and to take a percentage of the decedent's "augmented estate," and repeals the provisions in existing law that permit the surviving spouse to elect to take against the will and under the Intestate Succession Laws.

Probate Law contains numerous terms of art that may be unfamiliar to the layperson. The "***Definitions***" portion of the analysis contains definitions of many of the terms of art used in the bill.

Background

Surviving spouse's right in the mansion house

A surviving spouse may elect to receive, as part of the surviving spouse's intestate share, the entire interest of the decedent spouse in the mansion house (residence). The interest of the decedent spouse in the mansion house is valued at the appraised value with the deduction of that portion of all liens on the mansion house existing at the time of death and attributable to the decedent's interest in the mansion house. "Mansion house" includes the decedent's title in the parcel of land on which the house is situated and, at the option of the surviving spouse, the decedent's title in the household goods contained within the house and the lots or farm land adjacent to the house and used in conjunction with it as the home of the decedent. (Sec. 2106.10.)

Allowance for support

If a person dies leaving a surviving spouse and no minor children, leaving a surviving spouse and minor children, or leaving minor children and no surviving spouse, the surviving spouse, minor children, or both shall be entitled to receive in money or property the sum of $40,000 as an allowance for support. The $40,000 allowance must be distributed between the surviving spouse and children according to a formula specified in existing law. If the surviving spouse selected two automobiles the surviving spouse is entitled to select, the allowance for

support is reduced by the appraised value of the automobile having the lower appraised value of the two automobiles selected. The money or property set off as an allowance for support is considered an estate asset. (Sec. 2106.13.)

Right of surviving spouse to automobiles, watercraft, and outboard motor of decedent

Under existing law, upon the death of a married Ohio resident who owned at least one automobile at the time of death, the interest of the deceased spouse in up to two automobiles that are not transferred to the surviving spouse due to joint ownership with right of survivorship, and that are not otherwise specifically disposed of by testamentary disposition, may be selected by the surviving spouse. This interest immediately passes to the surviving spouse upon transfer of the title or titles. The sum total of the appraised values of the automobiles selected by a surviving spouse may not exceed $40,000. Each automobile that passes to a surviving spouse is not considered an estate asset and is not included and stated in the estate inventory. (Sec. 2106.18.)

Under existing law, upon the death of a married Ohio resident who owned at least one watercraft, one outboard motor, or one of each at the time of death, the interest of the deceased spouse in one watercraft, one outboard motor, or one of each that is not otherwise specifically disposed of by testamentary disposition and that is selected by the surviving spouse immediately passes to the surviving spouse upon receipt by the clerk of the court of common pleas of the title executed by the surviving spouse and an affidavit sworn by the surviving spouse stating the date of the decedent's death, a description of the watercraft, outboard motor, or both, its or their approximate value, and that the watercraft, outboard motor, or both are not disposed of by testamentary disposition. The watercraft, outboard motor, or both is not considered an estate asset and is not included and stated in the estate inventory. Transfer of a decedent's interest does not affect the existence of any lien against a watercraft or outboard motor so transferred. (Sec. 2106.19.)

Dower

A spouse who has not relinquished or been barred from it is endowed of an estate for life in one third of the real property of which the consort was seized as an estate of inheritance at any time during the marriage.

The dower interest described in the preceding paragraph terminates upon the death of the consort except (a) to the extent that the deceased consort conveyed any such real property during the marriage and the surviving spouse did not relinquish or has not been barred from dower interest in the real property, and (b) to the extent that the deceased consort encumbered any such real property during

the marriage by mortgage, judgment, lien except tax lien, or otherwise, or aliened the real property by involuntary sale, and the surviving spouse did not relinquish or has not been barred from dower interest in the real property. If the real property was encumbered or aliened prior to the consort's death, the dower interest of the surviving spouse in the real property is computed on the basis of the amount of the encumbrance at the time of the consort's death or at the time of the alienation, but not upon an amount exceeding the sale price of such property.

In lieu of the dower interest which terminates pursuant to the above provisions, a surviving spouse is entitled to the distributive share provided by the Intestate Succession Laws. Dower interest terminates if the spouses are granted an absolute divorce by a court of competent jurisdiction within or without Ohio. (Sec. 2103.02, not in the bill.)

Intestate succession for surviving spouses

Existing law

Under existing law, when a person dies intestate having title or right to any personal property, or to any real estate or inheritance, in Ohio, and the person is survived by a spouse, the personal property must be distributed, and the real estate or inheritance shall descend and pass in parcenary (to own jointly), except as otherwise provided by law, in the following course (sec. 2105.06):

(1) If there is a spouse and one child or its lineal descendants surviving, the first $60,000 if the spouse is the natural or adoptive parent of the child, or the first $20,000 if the spouse is not the natural or adoptive parent of the child, plus one-half of the balance of the intestate estate to the spouse and the remainder to the child or the child's lineal descendants, per stirpes;

(2) If there is a spouse and more than one child or their lineal descendants surviving, the first $60,000 if the spouse is the natural or adoptive parent of one of the children, or the first $20,000 if the spouse is the natural or adoptive parent of none of the children, plus one-third of the balance of the intestate estate to the spouse and the remainder to the children equally, or to the lineal descendants of any deceased child, per stirpes;

(3) If there are no children or their lineal descendants, then the whole to the surviving spouse.

Operation of the bill

Under the bill, when a person dies intestate having title or right to any personal property, or to any real estate or inheritance, in Ohio, and the person is

survived by a spouse and one or more children of the decedent or their lineal descendants surviving, and *all* of the decedent's children who survive or have lineal descendants surviving also are children of the surviving spouse, all of the personal property must be distributed, and all of the real estate or inheritance must descend, to the surviving spouse.

If there is a spouse and one child of the decedent or the child's lineal descendants surviving and the surviving spouse is *not* the natural or adoptive parent of the child, the first $20,000 plus one-half of the balance of the intestate estate to the spouse and the remainder to the child or the child's lineal descendants, per stirpes.

If there is a spouse and more than one child or their lineal descendants surviving, the first $60,000 if the spouse is the natural or adoptive parent of one, *but not all*, of the children, or the first $20,000 if the spouse is the natural or adoptive parent of none of the children, plus one-third of the balance of the intestate estate to the spouse and the remainder to the children equally, or to the lineal descendants of any deceased child, per stirpes.

If there are no children or their lineal descendants, then all of the personal property must be distributed, and all of the real estate or inheritance must descend, to the surviving spouse. (Secs. 2105.06(B), (C), (D), and (E), 2105.061, and 2106.22 (renumbered from 2106.11).)

Right of surviving spouse to elect to take against the will and the effect of election--Existing law

Right of surviving spouse to elect to take against the will

Under existing law, after the probate of a will and the filing of the inventory and the appraisement, the probate court must issue a "citation" (see "***Making the election***," below) to the surviving spouse, if any is living at the time of the issuance of the citation, to elect whether to take under the will or under the Intestate Succession Laws. However, when a surviving spouse succeeds to the entire estate of the testator, having been named the sole devisee and legatee, the law presumes that the spouse elects to take under the will of the testator, the probate court does not issue a citation to the surviving spouse, and no election is required unless the surviving spouse manifests a contrary intention. (Secs. 2106.01(A) and (F) and 2105.06.)

Effect of election to take under the Intestate Succession Laws

Under existing law, if the surviving spouse elects to take under the Intestate Succession Laws and if the value of the property that the surviving spouse is

entitled to receive under those laws is equal to or greater than the value of the decedent's interest in the mansion house, the surviving spouse also is entitled to elect to receive, as part of the surviving spouse's share of an intestate estate and the allowance for support, the entire interest of the decedent spouse in the mansion house. (Secs. 2106.01(B) and 2106.10.)

If the surviving spouse elects to take under the Intestate Succession Laws, the surviving spouse takes an amount not to exceed one-half of the net estate, unless two or more of the decedent's children or their lineal descendants survive, in which case the surviving spouse takes an amount not to exceed one-third of the net estate. The net estate is determined before payment of federal estate tax, Ohio estate tax, or any other tax to which the estate may be subject that is subject to apportionment by persons interested in the estate. (Sec. 2106.01(C).)

Unless the will expressly provides that if the surviving spouse elects to take under the Intestate Succession Laws there shall be no acceleration of remainder or other interests bequeathed or devised by the will, the balance of the net estate must be disposed of as though the surviving spouse had predeceased the testator. If there is a disposition by a will to an inter vivos trust that was created by the testator, if under the terms of the trust the surviving spouse is entitled to any interest in the trust or is granted any power or nomination with respect to the trust, and if the surviving spouse makes an election to take under the Intestate Succession Laws, then, unless the trust instrument provides otherwise, the surviving spouse is deemed for purposes of the trust to have predeceased the testator, and there is an acceleration of remainder or other interests in all property bequeathed or devised to the trust by the will, in all property held by the trustee at the time of the death of the decedent, and in all property that comes into the hands of the trustee by reason of the death of the decedent. (Sec. 2106.01(D).)

Effect of failure to make election

Under existing law, if the surviving spouse dies before probate of the will, or, having survived the probate, thereafter either fails to make the election or dies without having made an election within the times permitted for making an election, the surviving spouse is conclusively presumed to have elected to take under the will, and the surviving spouse and the heirs, devisees, and legatees of the surviving spouse, and those claiming through or under them, are bound by the conclusive presumption, and persons are permitted to deal with the property of the decedent accordingly; provided that, if applicable, the provisions regarding presumption of order of death if there is no evidence of the order of death prevail over the provisions relating to the right of election of a surviving spouse. (Sec. 2106.04.)

Effect of election to take under the will

Under existing law, if a surviving spouse elects to take under the will, the surviving spouse is barred of all right to an intestate share of the property passing under the will and takes under the will alone, unless it plainly appears from the will that the provision for the surviving spouse was intended to be in addition to an intestate share. An election to take under the will does not bar the right of the surviving spouse to an intestate share of that portion of the estate as to which the decedent dies intestate. Unless the will expressly otherwise directs, an election to take under the will does not bar the right of the surviving spouse to remain in the mansion house, and does not bar the right of the surviving spouse to receive the allowance for the support. (Sec. 2106.05.)

Right of surviving spouse to elect to take against the will--Operation of the bill

Repeal of existing right of spouse to take against the will

The bill repeals the existing provisions regarding the right of a surviving spouse to elect to take against the will and take under the Laws of Intestate Succession and the effect of an election a surviving spouse makes (secs. 2106.01, 2106.04, and. 2106.05 (outright repeal)). The bill replaces the repealed provisions with the provisions described below enacting a right to elect to take against the will and to take an "elective share" and the effect of an election a surviving spouse makes.

Surviving spouse's right to take an elective share under the bill

Under the bill, the surviving spouse of a decedent who dies domiciled in Ohio has a right of election, subject to the limitations and conditions specified in the Rights of the Surviving Spouse Laws, to take an elective share amount of the decedent's estate that is equal to the value of the "elective share percentage" that is determined pursuant to the schedule described below in "***Effect of election--elective share percentage***" multiplied by the decedent's "augmented estate." The right, if any, of the surviving spouse of a decedent who dies domiciled outside Ohio to take an elective share in any property in this state is governed by the law of the decedent's domicile at death. (New sec. 2106.02 and secs. 2113.23, 2113.53, 2113.54, 2113.86, and 2129.07.)

Effect of election--"elective share percentage"

The "elective share percentage" is determined by the length of time the surviving spouse and the decedent were married to each other in accordance with the following schedule (new sec. 2106.02(A)):

The length of time the decedent and the spouse were married to each other:	The elective share percentage of the augmented estate for the specified length of marriage:
Less than 1 year	Supplemental amount only
1 year or more but less than 2 years	3%
2 years or more but less than 3 years	6%
3 years or more but less than 4 years	9%
4 years or more but less than 5 years	12%
5 years or more but less than 6 years	15%
6 years or more but less than 7 years	18%
7 years or more but less than 8 years	21%
8 years or more but less than 9 years	24%
9 years or more but less than 10 years	27%
10 years or more but less than 11 years	30%
11 years or more but less than 12 years	34%
12 years or more but less than 13 years	38%
13 years or more but less than 14 years	42%
14 years or more but less than 15 years	46%
15 years or more	50%

Effect of election--supplemental elective share

If the sum of the amounts described below in "***Surviving spouse's property and nonprobate transfers to others***" and specified amounts of the decedent's net probate estate described below in the first tier of "***Order of application to satisfy the elective share under the bill***" and that part of the elective share amount payable from the decedent's probate estate and nonprobate transfers to others under the second and third tiers described below in "***Order of application to satisfy the elective share under the bill***" is less than $50,000, the surviving spouse is entitled to a supplemental elective share amount of the decedent's estate that is equal to $50,000 minus the sum of those amounts. The supplemental elective share amount is payable from the decedent's probate estate and from the recipients of the decedent's nonprobate transfers to others in the order of priority set forth in the

second and third tiers described below in "***Order of application to satisfy the elective share under the bill***." (New sec. 2106.02(B).)

Right to remain in the mansion house

If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's right to remain in the mansion house, if any, is not charged against but is in addition to the elective share and supplemental elective share amounts (new sec. 2106.02(C)).

Calculation of the augmented estate under the bill

Decedent's augmented estate

Subject to provisions in the bill specifying exclusions from the augmented estate, valuation of the augmented estate, and overlapping application of provisions regarding calculation of the augmented estate, the value of a *decedent's augmented estate* is equal to the sum of the values of all real, personal, movable, immovable, tangible, and intangible property, wherever situated, that constitutes the "decedent's net probate estate," the "decedent's nonprobate transfers to others," the "decedent's nonprobate transfers to the surviving spouse," and the "surviving spouse's property and nonprobate transfers to others" (new secs. 2106.03, 2106.04, 2106.05, 2106.06, 2106.07, and 2106.08).

Decedent's net probate estate

Under the bill, the value of a decedent's augmented estate includes the value of the decedent's probate estate, which is the value of the decedent's probate estate (the property that would pass by intestate succession if the decedent died without a valid will) minus funeral and administration expenses, any right of the decedent's surviving spouse to remain in the mansion house, and any enforceable claims against the decedent's estate. The value of a decedent's augmented estate is not reduced by the allowance for support set off to the decedent's surviving spouse or by the value of the transfer of the title to an automobile, watercraft, or outboard motor to the decedent's surviving spouse. (New secs. 2106.01(J) and 2106.04.)

Decedent's nonprobate transfers to others

Under the bill, the value of the augmented estate includes the value of any of the following categories or types of the decedent's nonprobate transfers to others that are not included in the decedent's probate estate, in the following amounts respectively for each of the following categories or types of transfer (new secs. 2106.01(A) and 2106.05):

(1) Property that was owned or owned in substance by the decedent immediately before death and that passed outside probate at the decedent's death. Property included under this category consists of the following:

(a) Property over which the decedent alone held immediately before death a presently exercisable general power of appointment. The amount included in the decedent's augmented estate under this paragraph is the value of the property that is subject to the power and that passed at the decedent's death, by exercise, release, lapse, default, or otherwise, to or for the benefit of a person other than the decedent's estate or surviving spouse.

(b) The decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship. The amount included in the decedent's augmented estate under this paragraph is the value of the decedent's fractional interest that passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse.

(c) The decedent's ownership interest in property, accounts with POD (payable on death) designation, securities registered in beneficiary form with TOD (transfer on death) designation, securities registered under a co-ownership designation with the right of survivorship, annuities, Keogh plans, individual retirement accounts, pension and profit sharing plans, and other qualified plans or other contractual rights. The amount included in the decedent's augmented estate under this paragraph is the value of the decedent's ownership interest in the property, account, security, annuity, or plan or other contractual right that passed at the decedent's death to or for the benefit of a person other than the decedent's estate or surviving spouse.

(d) The proceeds of insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before the decedent's death or if and to the extent the decedent alone and immediately before the decedent's death held a presently exercisable general power of appointment over the policy or its proceeds. The amount included in the decedent's augmented estate under this paragraph is the value of the proceeds of the insurance that were payable at the decedent's death to or for the benefit of a person other than the decedent's estate or surviving spouse.

(2) Property transferred in any of the following forms by the decedent during marriage:

(a) An irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property, if and to the extent the decedent's right terminated at or continued beyond the decedent's death.

The amount included in the decedent's augmented estate under this paragraph is the value of the fraction of the property to which the decedent's right related and that passed outside probate to or for the benefit of a person other than the decedent's estate or surviving spouse.

(b) A transfer in which the decedent created a power over income or property that was exercisable by the decedent alone or in conjunction with another person or that was exercisable by a nonadverse party, to or for the benefit of the decedent, the creditors of the decedent, the decedent's estate, or the creditors of the decedent's estate. The amount included in the decedent's augmented estate under paragraph (2)(b) is one of the following:

(i) With respect to a power over property, the value of the property subject to the power that was exercisable at the decedent's death to or for the benefit of a person other than the decedent's surviving spouse or that passed at the decedent's death, by exercise, release, lapse, default, or otherwise, to or for the benefit of a person other than the decedent's estate or surviving spouse;

(ii) With respect to a power over income, the value of the property that produces or produced the income and that was exercisable at the decedent's death to or for the benefit of a person other than the decedent's surviving spouse or that passed at the decedent's death, by exercise, release, lapse, default, or otherwise, to or for the benefit of a person other than the decedent's estate or surviving spouse;

(iii) With respect to a power over both income and property, the greater of the amounts included in paragraphs (2)(b)(i) and (ii).

(3) The commuted value of the expectancy of dower to which the decedent's surviving spouse is entitled;

(4) Property that passed during the marriage of the decedent and the decedent's surviving spouse and during the two-year period immediately preceding the decedent's death as a result of a transfer by the decedent, if the transfer was any of the following:

(a) A transfer of property that passed as a result of the termination of a right in, interest in, or power over property that would have been included in the augmented estate as part of the decedent's nonprofit transfers to others under paragraph (1)(a), (b), or (c) or (2), above, if the right, interest, or power had not terminated until the decedent's death. The amount included in the decedent's augmented estate under this paragraph is the value of the property that would have been included in the augmented estate as part of the decedent's nonprofit transfers to others under paragraph (1)(a), (b), or (c) or (2), above, if the property were

valued at the time the right, interest, or power terminated and that passed upon termination to or for the benefit of a person other than the decedent or the decedent's estate, spouse at the time of the transfer, or surviving spouse. As used in this paragraph, "termination" with respect to a right or interest in property, occurs when the right or interest terminates by the terms of the governing instrument or 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. However, with respect to a power over property described above in paragraph (1)(a), "termination" occurs only when the power terminates by exercise or release.

(b) A transfer of or relating to an insurance policy on the life of the decedent if the proceeds of the insurance would have been included in the augmented estate as part of the decedent's nonprofit transfers to others under paragraph (1)(d), above, had the transfer not occurred. The amount included in the decedent's augmented estate under this paragraph is the value of the insurance proceeds that were payable at the decedent's death to or for the benefit of a person other than the decedent's estate or surviving spouse.

(c) A transfer of property that is not otherwise included in the augmented estate and that is made to or for the benefit of a person other than the decedent's surviving spouse. The amount included in the decedent's augmented estate under this paragraph is the value of the transferred property to the extent the aggregate transfers to any one donee in either of the two years immediately preceding the decedent's death exceeded $10,000.

Exclusions from decedent's nonprobate transfers to others

The value of any property is excluded from a decedent's nonprobate transfers to others to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property or if the property was transferred with the written joinder of, or the transfer was consented to in writing by, the surviving spouse (new sec. 2106.08(A)).

In the circumstances described in "***Making the election***," below, the decedent's nonprobate transfers to others are not included in the decedent's augmented estate for the purpose of computing the elective share (new sec. 2106.11(A)).

Valuation of decedent's nonprobate transfers to others

The value of property included in a decedent's augmented estate as part of the decedent's nonprobate transfers to others is reduced by enforceable claims

against the included property (new sec. 2106.08(B)(1)). The value of property included in a decedent's augmented estate as part of the decedent's nonprobate transfers to others includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension plan, disability compensation plan, death benefit or retirement plan, or any similar contract or plan, except federal Social Security benefits or payments. The commuted value of property is to be determined by reference to valuation tables prescribed and published by the United States Secretary of the Treasury that use an interest rate determined pursuant to section 7520 of the Internal Revenue Code for the month in which the valuation date occurs. (New sec. 2106.08(B)(2) and (3).)

Decedent's nonprobate transfers to the surviving spouse.

Under the bill, except for property that passes to the surviving spouse in the form of federal Social Security benefits or payments, the value of the augmented estate includes the value of all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death, including, but not limited to, the following (new sec. 2106.06):

(1) The decedent's fractional interest in property held as a joint tenant with the right of survivorship that passed to the surviving spouse as surviving joint tenant;

(2) The decedent's ownership interest in property held as a co-owner with the right of survivorship or in securities registered under a co-ownership designation with the right of survivorship that passed to the surviving spouse as surviving co-owner;

(3) The commuted value of the expectancy of dower to which the surviving spouse is entitled;

(4) All other property that would have been included in the augmented estate under paragraphs (1) and (2) under "***Decedent's nonprobate transfers to others***," if the property had passed to or for the benefit of a person other than the decedent's surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors.

Valuation of decedent's nonprobate transfers to surviving spouse

The value of property included in a decedent's augmented estate as part of the decedent's nonprobate transfers to the surviving spouse is reduced by enforceable claims against the included property (new sec. 2106.08(B)(1)). The

value of property included in a decedent's augmented estate as part of the decedent's nonprobate transfers to the surviving spouse includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension plan, disability compensation plan, death benefit or retirement plan, or any similar contract or plan, except federal Social Security benefits or payments. The commuted value of property is to be determined by reference to valuation tables prescribed and published by the United States Secretary of the Treasury that use an interest rate determined pursuant to section 7520 of the Internal Revenue Code for the month in which the valuation date occurs. (New sec. 2106.08(B)(2) and (3).)

Surviving spouse's property and nonprobate transfers to others

Under the bill, except to the extent included in a decedent's augmented estate as part of the decedent's net probate estate or the decedent's nonprobate transfers to the surviving spouse, the value of a decedent's augmented estate includes the value of any of the following (new sec. 2106.07(A)):

(1) Property that was owned by the decedent's surviving spouse at the decedent's death, including, but not limited to, all of the following:

(a) The surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;

(b) The surviving spouse's ownership interest in property held as a co-owner with the right of survivorship or in securities registered under a co-ownership designation with the right of survivorship;

(c) Property that passed to the surviving spouse by reason of the decedent's death, but not including the surviving spouse's right to remain in the mansion house or to receive federal Social Security benefits or payments.

(2) Property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests included in the augmented estate as part of the surviving spouse's property and nonprobate transfers to others under paragraph (1)(a) or (b), above, if the surviving spouse had been the decedent.

Valuation of surviving spouse's property and nonprobate transfers to others

Property that is included in a decedent's augmented estate as surviving spouse's property and nonprobate transfers to others is valued at the decedent's death, taking into account the fact that the decedent predeceased the decedent's

surviving spouse. For purposes of paragraph (1)(a) or (b), above, the values of the surviving spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or securities. For purposes of paragraph (2), above, proceeds of insurance that would have been included in the surviving spouse's property and nonprobate transfers to others are not valued as if the surviving spouse were deceased. The value of property that is included in a decedent's augmented estate as surviving spouse's property and nonprobate transfers to others is reduced by enforceable claims against the decedent's surviving spouse and against the included property. (New secs. 2106.07(B) and (C) and 2106.08(B)(1).)

The value of property included in a decedent's augmented estate as the surviving spouse's property and nonprobate transfers to others includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension plan, disability compensation plan, death benefit or retirement plan, or any similar contract or plan, except federal Social Security benefits or payments. The commuted value of property is to be determined by reference to valuation tables prescribed and published by the United States Secretary of the Treasury that use an interest rate determined pursuant to section 7520 of the Internal Revenue Code for the month in which the valuation date occurs. (New sec. 2106.08(B)(2) and (3).)

Overlapping provisions relating to the determination of the augmented estate

If the same property is included more than once in the decedent's augmented estate under the bill's provisions regarding the decedent's nonprobate transfers to others, the decedent's nonprobate transfers to the surviving spouse, or the surviving spouse's property and nonprobate transfers to others, the property is included in the augmented estate under the provision that yields the greatest value and under only one provision if the provisions all yield the same value (new sec. 2106.08(C)).

Order of application to satisfy the elective share under the bill

First tier

In a proceeding for an elective share, the following are applied first to satisfy the elective share amount of the decedent's surviving spouse and to reduce or eliminate any contribution due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others (new sec. 2106.09(A)):

(1) The amounts included in the decedent's augmented estate as part of the decedent's net probate estate, other than the right of the decedent's surviving spouse to remain in the mansion house, that pass or have passed to the decedent's surviving spouse by testate or intestate succession, the amount of the allowance for support set off to the decedent's surviving spouse, the commuted value of any expectancy of dower to which the decedent's surviving spouse is entitled, the value of an automobile, watercraft, or outboard motor transferred to the decedent's surviving spouse, and amounts included in the augmented estate as part of the decedent's nonprobate transfers to the surviving spouse;

(2) The commuted value of any life or term interest received by the surviving spouse from the decedent in property that is part of the decedent's augmented estate and that could qualify for a federal estate tax marital deduction in the decedent's estate;

(3) The amounts included in the decedent's augmented estate as part of the surviving spouse's property and nonprobate transfers to others up to twice the elective share percentage set forth in the schedule specified in "***Elective share***," above, that is appropriate to the length of time the surviving spouse and the decedent were married to each other.

Second tier

If, after the application of the amounts described above in the first tier, the elective share amount of a decedent's surviving spouse is not fully satisfied or the surviving spouse is entitled to a supplemental elective share amount, the amounts next to be applied are the amounts included in the decedent's probate estate and in the decedent's nonprobate transfers to others, other than amounts described above in paragraph (4)(a) or (c) of "***Decedent's nonprobate transfers to others***," are applied first to satisfy the unsatisfied balance of the elective share amount or the supplemental elective share amount. The decedent's probate estate and that portion of the decedent's nonprobate transfers to others are to be applied so that liability for the unsatisfied balance of the elective share amount or for the supplemental elective share amount is equitably apportioned among the recipients of the decedent's probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests. (New sec. 2106.09(B).)

Third tier

If, after the application of the amounts described above in the first and second tiers, the elective share amount or supplemental elective share amount of the decedent's surviving spouse is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is to be applied so that liability for the

unsatisfied balance of the elective share amount or supplemental elective share amount is equitably apportioned among the recipients of the remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests (new sec. 2106.09(C)).

Personal liability of recipients

Only original recipients in a decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others, to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the decedent's surviving spouse's elective share amount or supplemental elective share amount. A person who is liable to make a proportional contribution may choose to give up the proportional part of the decedent's nonprobate transfer to the person or to pay the value of the amount of the proportional contribution for which the person is liable.

If a provision of the Rights of Surviving Spouses Laws is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to others, a person who, not for value, receives the payment, item of property, or 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 above in "***Order of application to satisfy the elective share***," to the person who would have been entitled to it if that provision had not been preempted by federal law.

If a surviving spouse is unable to collect the full amount due under the provisions in the two preceding paragraphs because of uncollectibility, inability to obtain appropriate jurisdiction, or another reason, the uncollected amounts shall not be reapportioned, and the surviving spouse shall bear the burden of the uncollected amounts. (New sec. 2106.10.)

Making the election under existing law

Citation to surviving spouse to make the election

Under existing law, the probate court must send the citation to make the election to the surviving spouse by certified mail, and notice that the citation has been issued by the court must be given to the administrator or executor of the estate of the deceased spouse. The citation must be accompanied by a general description of the effect of the election and the general rights of the surviving spouse. The description must include a specific reference to the procedures available to the surviving spouse for construction of the will and to the presumption of taking under the will that arises if the surviving spouse does not

make an election. The description of the effect of the election and of the rights of the surviving spouse is not required to relate to the nature of any particular estate. (Sec. 2106.02(A) and (B).)

How to make the election--generally

Except when the court issues a commission to a suitable person to take the election or when the surviving spouse is unable to make the election because of a legal disability, the election of a surviving spouse under existing law to take against the will and under the Intestate Succession Laws must be made in person before the probate judge or a deputy clerk who has been appointed to act as a referee. When the election is made in person before the judge or referee, the judge or referee shall explain the will, the rights under the will, and the rights, by law, in the event of a refusal to take under the will. (Sec. 2106.06.)

A surviving spouse electing to take under the will is permitted to manifest the election in writing within the times prescribed for making the election. (Sec. 2106.02(C).)

Commission issued to take election of surviving spouse

Under existing law, upon the filing of an application on behalf of a surviving spouse, the probate court is permitted to issue a commission, with a copy of the will attached, directed to any suitable person, to take the election of the surviving spouse. In the commission, the court must direct the suitable person to explain the rights of the surviving spouse under the will and under the Intestate Succession Laws. (Sec. 2106.07.)

Election made on behalf of one under a legal disability

If, because of a legal disability, a surviving spouse is unable to make an election, as soon as the facts come to the knowledge of the probate court, the probate court under existing law must appoint some suitable person to ascertain the value of the provision made for the surviving spouse by the testator, the value of the rights of the surviving spouse in the estate of the testator under the Intestate Succession Laws, and the adequate support needs of the surviving spouse after taking into consideration the other available resources and the age, probable life expectancy, physical and mental condition, and present and reasonably anticipated future needs of the surviving spouse. The appointment by the court shall be made at any time within the times prescribed for making an election.

When the appointed person returns the report of the person's investigation, the court is permitted to elect for the surviving spouse to take under the Intestate Succession Laws only if it finds, after taking into consideration the other available

resources and the age, probable life expectancy, physical and mental condition, and present and reasonably anticipated future needs of the surviving spouse, that the election to take under the Intestate Succession Laws is necessary to provide adequate support for the surviving spouse during the surviving spouse's life expectancy.

After making its determination under this provision, the court must record upon its journal the election made for the surviving spouse. When the election is entered, it has the same effect as an election made by one not under legal disability. (Sec. 2106.08.)

Time limits for making election

The election of a surviving spouse to take under a will or under the Intestate Succession Laws under existing law may be made at any time after the death of the decedent but must be made not later than one month from the service of the citation to elect. On a motion filed before the expiration of the one-month period and for good cause shown, the court may allow further time for the making of the election. If no action is taken by the surviving spouse before the expiration of the one-month period, it is conclusively presumed that the surviving spouse elects to take under the will. The court must enter the election on the journal of the court.

When proceedings for advice or to contest the validity of a will are begun within the time allowed for making the election, the election may be made within three months after the final disposition of the proceedings, if the will is not set aside. (Sec. 2106.01(E).)

Making the election under the bill

The bill repeals the existing provisions regarding making the election to take against the will (secs. 2106.01, 2106.02, 2106.06, 2106.07, and 2106.08 (outright repeal)). The bill replaces the repealed provisions with the provisions described below.

How to make the election--generally

Under the bill, the surviving spouse of a decedent is permitted to make an election by filing in the probate court of the county in which the decedent was domiciled at the time of the decedent's death and mailing or delivering to any personal representative of the decedent a petition for the elective share. The surviving spouse must file the petition within the later of nine months after the date of the decedent's death or six months after the probate of the decedent's will. The fiduciary of the decedent's estate or any other person interested in the decedent's estate is permitted to request that the petition for the elective share be

filed within a period of time that is shorter than that period of time by filing a petition in the probate court requesting that the surviving spouse be required to file the petition for the elective share within 30 days of receipt of a citation from the probate court or be barred from any elective share. Upon the filing of the request by the fiduciary or interested person, the probate court must issue a citation by certified mail, return receipt requested, to the surviving spouse that requires the surviving spouse, within 30 days of receipt of the citation, to file a petition for the elective share or request the probate court to grant an extension of the time within which the petition for an elective share must be filed. If the surviving spouse, within that 30-day period, fails to file a petition for the elective share or to request the probate court to grant an extension of the time within which the petition for an elective share must be filed, the surviving spouse is barred from filing a petition for an elective share and from otherwise making any further election under the provisions described in "***Elective share***," above.

If the surviving spouse files a petition for the elective share, the surviving spouse must give notice of the time and place set for a hearing on the petition for the elective share to persons interested in the decedent's estate and to the distributees and recipients of portions of the decedent's augmented estate whose interests will be adversely affected by the taking of the elective share. Except as provided in the subsequent paragraph, the decedent's nonprobate transfers to others are not included in the decedent's augmented estate for the purpose of computing the elective share if the surviving spouse files the petition for an elective share more than nine months after the decedent's death. The probate court cannot approve the final account of the executor or the administrator of the estate until the surviving spouse has filed a petition for an elective share or the time for filing the petition has expired. (New sec. 2106.11(A) and sec. 2109.32(B) and secs. 2113.23, 2113.53, 2113.54, and 2129.07.)

Within the earlier of nine months after the decedent's death or 30 days after the receipt of a citation to elect that is issued by the probate court, the surviving spouse is permitted to petition the court for an extension of the time within which to make an election. If, within the earlier of nine months after the decedent's death or 30 days after receipt of a citation to elect that is issued by the probate court, the spouse gives notice of the petition for an extension to all persons interested in the decedent's nonprobate transfers to others, the probate court for good cause shown by the surviving spouse may extend the time for making an election. If the court grants the spouse's petition for an extension of the time within which to make an election and if the surviving spouse, within the period of time allowed by the extension, makes an election by filing in the probate court and mailing or delivering to any personal representative of the decedent a petition for an elective share, the decedent's nonprobate transfers to others are not excluded from the

decedent's augmented estate for the purpose of computing the elective share and supplemental elective share amounts. (New sec. 2106.11(B).)

The surviving spouse is permitted to withdraw the petition for an elective share at any time before entry of a final determination on the elective share by the court (new sec. 2106.11(C)).

After notice and a hearing, the court must determine the elective share and supplemental elective share amounts of the decedent's surviving spouse and must order the payment of those amounts from the assets of the decedent's augmented estate or by contribution, as appropriate, under the provisions described in "***Order of application to satisfy the elective share under the bill***" and "***Personal liability of recipients***," above. If it appears that a fund or property included in the decedent's augmented estate has not come into the possession of the decedent's personal representative or has been distributed by the personal representative, the court nevertheless must determine the liability of any person who has an interest in the fund or property or who has possession of the fund or property, whether as trustee or otherwise. The proceeding to determine that liability may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than the person would have been subject to contribution under the provisions described in "***Order of application to satisfy the elective share under the bill***" and "***Personal liability of recipients***," above, if relief had been secured against all persons subject to contribution. An order or judgment of the court determining the elective share may be enforced, as necessary, in an action for contribution or payment in other Ohio courts, courts of other states, or courts of the United States. (New sec. 2106.11(D) and (E).)

Right of election personal to surviving spouse; election made on behalf of one under a legal disability

Under the bill, only a surviving spouse of a decedent who is living when the petition for the elective share is filed in the probate court is permitted to exercise the right of election. If the surviving spouse does not personally exercise the right of election, the surviving spouse's conservator, guardian, or agent under the authority of a power of attorney is permitted to exercise the right of election on behalf of the surviving spouse. If, because of a legal disability, a surviving spouse is unable to make an election and if the surviving spouse does not have a conservator, guardian, or agent, the probate court is permitted to appoint a guardian ad litem for the surviving spouse to consider all the facts and circumstances related to the decedent's estate and the surviving spouse's right of election and recommend to the court whether or not to petition on behalf of the surviving spouse for the elective share. After considering the recommendation of the guardian ad litem or on its own initiative, the court is permitted to order the

filing on behalf of the surviving spouse of the petition for the elective share. The court is prohibited from issuing an order to file a petition for the elective share until after the court considers other available resources and the age, probable life expectancy, physical and mental condition, and present and reasonably anticipated future needs of the surviving spouse and determines that the election is necessary to provide adequate support for the surviving spouse during the surviving spouse's life expectancy. (New sec. 2106.12(A).)

Election on behalf of an incapacitated surviving spouse

If, under the bill, the right of election is exercised on behalf of a decedent's surviving spouse who is an incapacitated person, the court must set aside that portion of the elective share and supplemental elective share amounts due from the decedent's probate estate and from recipients of the decedent's nonprobate transfers to others under the second and third tiers of "***Order of application to satisfy the elective share under the bill***" above, and must appoint a trustee to administer that property for the support of the surviving spouse. For purposes of this provision, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. (New sec. 2106.12(B).)

The trustee is required to administer the trust in accordance with the following terms and any additional terms that the court determines appropriate (new sec. 2106.12(B).):

(1) The trustee is permitted to make expenditures of income and principal in the manner, at the time, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order, but with regard to other support, income, and property of the surviving spouse and benefits of medical or other forms of assistance from a state or federal government or governmental agency for which the surviving spouse qualifies on the basis of need.

(2) During the surviving spouse's incapacity, the surviving spouse or a person acting on behalf of the surviving spouse has the power to terminate the trust. If the surviving spouse regains capacity, the surviving spouse acquires the power to terminate the trust and acquire full ownership of the trust property free of trust by delivering to the trustee a writing signed by the surviving spouse declaring the termination of the trust.

(3) Upon the death of the surviving spouse, the trustee must transfer the unexpended trust property to the estate of the surviving spouse.

If the right of election is exercised on behalf of a decedent's surviving spouse who is an incapacitated person and if there is an existing trust of which the incapacitated surviving spouse is the beneficiary, with or without court supervision, or an existing guardianship or conservatorship for the lifetime benefit of the incapacitated surviving spouse, the court, in lieu of appointing a separate trustee, is permitted to order that the portion of the elective share and supplemental elective share amounts that is set aside be added to the existing trust, guardianship, or conservatorship (new sec. 2106.12(C)).

Waiver of right to elect and other rights

Under the bill, the right of election of a surviving spouse and the rights of the surviving spouse to an allowance for support, to remain in the mansion house, and to the transfer to the spouse of the title to one automobile, one watercraft, or one outboard motor may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse. Unless the waiver provides otherwise, a waiver of "all rights" or equivalent language in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of legal separation or divorce is a waiver of all the rights to the elective share, to remain in the mansion house, to the title to an automobile and to one watercraft and one outboard motor, and to an allowance for support, a waiver by each spouse of all rights in the property of the other, and a renunciation by each spouse of all benefits that would otherwise pass to the spouse from the other by intestate succession or by virtue of a will executed before the waiver or property settlement. (New sec. 2106.13(A) and (D).)

A waiver by a surviving spouse is not enforceable if the surviving spouse proves any of the following (new sec. 2106.13(B)):

(1) The surviving spouse did not execute the waiver voluntarily.

(2) The waiver was unconscionable when it was executed, and, before execution of the waiver, any of the following occurs: (a) the surviving spouse did not have full knowledge or understanding of the waiver or was not provided a fair and reasonable disclosure of the property of the decedent, (b) the surviving spouse did not enter into the waiver or agreement freely and without fraud, duress, coercion, or overreaching, or (c) the terms of the waiver promote or encourage divorce or profiteering by divorce.

The probate court must decide as a matter of law an issue of unconscionability of a waiver (new sec. 2106.13(C)).

Action to set aside antenuptial agreement, separation agreement, or waiver

Under existing law, any antenuptial or separation agreement to which a decedent was a party is valid unless an action to set it aside is commenced within four months after the appointment of the executor or administrator of the estate of the decedent or unless, within the four-month period, the validity of the agreement otherwise is attacked. Under the bill, any antenuptial agreement, separation agreement, or *waiver of the right to election, of the allowance for support of the right to remain in the mansion house, or of the spouse's right to an automobile, one watercraft, and one outboard motor* is valid unless an action to set it aside is commenced within *six* months after the date of the decedent's death (sec. 2106.32 (renumbered from 2106.22).

Protection of payors and other third parties

Notwithstanding that generally under the bill (see "***Decedent's nonprobate transfers to others***," above) a payment, item of property, or other benefit is included in the decedent's nonprobate transfers to others, a payor or other third party is not liable under the bill for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or the surviving spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable under the bill for payments made or other actions taken after the payor or other third party receives written notice of an intention by the surviving spouse or the surviving spouse's representative to file a petition for the elective share or that a petition for the elective share has been filed. (New sec. 2106.14(A).)

Under the bill, the surviving spouse or the surviving spouse's representative must mail a written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of the written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party is permitted to pay any amount owed or transfer or deposit any item of property held by it to or with the probate court in which the probate proceedings related to the decedent's estate have been commenced or, if no probate proceedings related to the decedent's estate have been commenced, to or with the probate court of the county of the decedent's residence. The probate court must

hold the funds or item of property and, upon its determination of the elective share, must order disbursement in accordance with the determination. If no petition for an elective share is filed in the probate court within the permitted time or if after such a petition has been filed the demand for an elective share is withdrawn, the court must order disbursement to the designated beneficiary. Payments or transfers to the court or deposits made into court discharge the payor or other third party from all claims for amounts so paid or the value of property so transferred or deposited. (New sec. 2106.14(B).)

Upon petition to the probate court by the beneficiary designated in a governing instrument, the court is permitted to order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with the Rights of Surviving Spouses Laws (new sec. 2106.14(C)).

Complaint for construction of the will

Under existing law, within the times prescribed for making an election, the surviving spouse is permitted to file a complaint in the probate court that requests a construction of the will in favor of the surviving spouse and requests the court to render a judgment to that effect. The complaint must make all persons interested in the will defendants. The bill repeals this provision. (Sec. 2106.03 (outright repeal).)

Miscellaneous

Relocation of sections under the bill

The bill relocates a number of provisions in the Rights of Surviving Spouses Laws and makes a series of technical and conforming amendments (secs. 319.54(F)(3)(q), 1547.54(A)(1)(a), 1548.07(B), 1548.071, 1548.08(B), 1548.11, 1775.24(B)(5), 2101.16(A)(33), 2105.061, 2106.21 (renumbered from 2106.10), 2106.22 (renumbered from 2106.11), 2106.23 (renumbered from 2106.13), 2106.24 (renumbered from 2106.15), 2106.25 (renumbered from 2106.16), 2106.26 (renumbered from 2106.17), 2106.27 (renumbered from 2106.18), 2106.28 (renumbered from 2106.19), 2106.31 (renumbered from 2106.20), 2106.32 (renumbered from 2106.22), 2106.36 (renumbered from 2106.24), 2107.63, 2109.32, 2109.67, 2113.03, 2115.16, 2117.25, 2117.251, 2127.02, 2127.03, 2127.31, 2127.41, 2129.07, 2329.83, 4503.12, 4505.06, 4505.10, 4549.41, 5731.16, and 5731.37).

Definitions

The following definitions are used in the bill, and the following defined terms of art are applicable to both existing law and the bill but are not located in

either; the definitions of existing terms are taken from either Black's Law Dictionary or case law, and the definitions of new terms are defined in new section 2106.01:

Account with POD designation. "Account with POD designation" means an account that includes a designation of a beneficiary who will become the owner of the account upon the death of the present owner of the account, as shown by the words "pay on death" or "payable on death" or the abbreviation "POD" after the name of the owner of the account (new sec. 2106.01(R)).

Beneficial interest. A "beneficial interest" in property includes a general power of appointment over the property (new sec. 2106.01(N)).

Beneficiary of a beneficiary designation. "Beneficiary of a beneficiary designation" means a beneficiary named in an insurance policy, an annuity policy, an account with POD designation, a security registered in beneficiary form with TOD designation, a pension, profit sharing, retirement, Keogh, or similar benefit plan, or any other nonprobate transfer at death (new sec. 2106.01(B)).

Bequest. "Bequest" means a gift by will of personal property; a legacy (Black's Law Dictionary, Fifth edition).

Bequeath. "Bequeath" means to give personal property by will to another (Black's Law Dictionary, Fifth edition).

Devise. "Devise" means a gift of real property by the last will and testament of the donor (Black's Law Dictionary, Fifth edition).

Devisee. "Devisee" means the person to whom lands or other real property are devised or given by a will (Black's Law Dictionary, Fifth edition).

Dower. "Dower" means the provision that the law makes for a widow out of the lands or tenements of her husband, for her support and the nurture of her children (Black's Law Dictionary, Fifth edition).

Elective share. "Elective share amount" or "elective share" means the elective share percentage of the decedent's augmented estate described above under "***Right of surviving spouse to elect to take against the will and the effect of election***," and "***Calculation of the augmented estate under the bill***" (new sec. 2106.01(O)).

Fractional interest in property held in joint tenancy with the right of survivorship. "Fractional interest in property held in joint tenancy with the right of survivorship," whether the fractional interest is unilaterally severable or not, means

the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants (new sec. 2106.01(C)).

Governing instrument. "Governing instrument" means a deed, a will, a trust, an insurance policy, an annuity policy, an account with POD designation, a security registered in beneficiary form with TOD designation, a pension, profit sharing, retirement, Keogh, or similar benefit plan, an instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of a similar type as the instruments listed in this division (new sec. 2106.01(D)).

Heir. "Heir" means the person appointed by law to succeed to the estate in case of intestacy. (Black's Law Dictionary, Fifth edition.)

Inter vivos trust. "Inter vivos trust" means a trust created during lifetime of settlor (the creator of the trust) that becomes effective in the settlor's lifetime as contrasted with a testamentary trust which takes effect at death of settlor (Black's Law Dictionary, Fifth edition).

Intestate. "Intestate" means without making a will. A person is said to die intestate when the person dies without making a will or without having disposed by will of a part of the person's property. (Black's Law Dictionary, Fifth edition.)

Legacy. "Legacy" means a disposition of personal property by will; a bequest (Black's Law Dictionary, Fifth edition).

Legatee. "Legatee" means the person to whom a legacy in a will is given (Black's Law Dictionary, Fifth edition).

Mansion house. "Mansion house" generally means the family residence (*In the Matter of the Estate of Johnson* (1984), 14 Ohio App. 3d 235).

Marriage. "Marriage," as it relates to a transfer by the decedent during marriage, means a marriage of the decedent to the decedent's surviving spouse (new sec. 2106.01(E)).

Nonadverse party. "Nonadverse party" means a person who does not have a substantial beneficial interest in a trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that the person possesses respecting the trust or other property arrangement (new sec. 2106.01(F)).

Payor. "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments (new sec. 2106.01(G)).

Per stirpes. "Per stirpes" means by roots or stocks; by representation. This term denotes that method of dividing an intestate estate where a class or group of distributees take the share to which their deceased ancestor would have been entitled, taking thus by their right of representing that ancestor, and not as so many individuals. (Black's Law Dictionary, Fifth edition.)

Power of appointment. "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary designation (new sec. 2106.01(H)).

Presently exercisable general power of appointment. "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power, held a power to create a present or future interest in the decedent, the decedent's creditors, the decedent's estate, or the creditors of the decedent's estate and includes a power to revoke or invade the principal of a trust or other property arrangement (new sec. 2106.01(I)).

Probate estate. "Probate estate" means property that would pass by intestate succession if the decedent died without a valid will (new sec. 2106.01(J)).

Property. "Property" means anything that is subject to ownership and includes real property, personal property, an interest in real or personal property, and the value of any property or interest in property that is subject to a beneficiary designation (new sec. 2106.01(K)).

Right of election. "Right of election" means the right of a decedent's surviving spouse to elect to receive an elective share amount (new sec. 2106.01(Q)).

Right to income. "Right to income" includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement (new sec. 2106.01(L)).

Security registered in beneficiary form with TOD designation. "Security registered in beneficiary form with TOD designation" means a security that is registered under the Transfer-On-Death Security Registration Laws with a designation of a beneficiary who will become the owner of the security upon the

death of the present owner of the security, as shown by the words "transfer on death" or the abbreviation "TOD," after the name of the registered owner of the security and before the name of the beneficiary (new sec. 2106.01(S)).

Supplemental elective share. "Supplemental elective share amount" or "supplemental elective share" means the supplemental elective share amount of the decedent's augmented estate determined as described under "***Supplemental elective share***" (new sec. 2106.01(P)).

Transfer. "Transfer," as it relates to a transfer by or of the decedent, includes any of the following (new sec. 2106.01(M)):

(1) An exercise or release of a presently exercisable general power of appointment held by the decedent;

(2) A lapse at death of a presently exercisable general power of appointment held by the decedent;

(3) An exercise, release, or lapse of a general power of appointment that the decedent created in the decedent and of the power described in paragraph (2)(b) under "***Decedent's nonprobate transfers to others***" that the decedent conferred on a nonadverse party.

Testate. "Testate" means one who has made a will; one who dies leaving a will (Black's Law Dictionary, Fifth edition).

Testator. "Testator" means one who makes or has made a testament or will; one who dies leaving a will. (Black's Law Dictionary, Fifth edition.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
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