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ELECTIVE SHARE

What is the Elective Share? To prevent a surviving spouse from being disinherited, North Carolina provides what is known as an "Elective Share." When a married person dies, his or her surviving spouse may have the right to elect to take a share of the deceased spouse's estate. The Elective Share may apply even if the surviving spouse received property as a result of the spouse's death (whether by contract, beneficiary designation, will or living trust), if the surviving spouse did not receive property equal to, or greater than, his or her Elective Share. Spouses may agree in pre or post-nuptial agreements to waive the right to take an Elective Share.

How does the Elective Share work? The surviving spouse is entitled to a percentage (the "Applicable Share") of the deceased spouse's estate. North Carolina statutory law dictates what is included in the deceased spouse's estate for purposes of the Elective Share. For many years, the Applicable share was based on whether the marriage was a first or second (or successive) marriage, the number of children the deceased spouse had, and whether the children were born of the marriage to the surviving spouse or a prior spouse.

How has the Elective Share changed? The Applicable Share, effective for decedent's dying on or after October 1, 2013, is now based on the length of the marriage and does not take into account whether the marriage is a second or successive marriage. The chart below lists the new Applicable Share percentages.

Length of Marriage	Applicable Share Percentage
Less than 5 Years	15%
At least 5, but less than 10 years	25%
At least 10, but less than 15 years	33%
15 years or more	50%

How does this change in the law affect my estate plan? This change in the law will likely not affect your estate plan if you have a pre-nuptial or post-nuptial agreement. However, you may wish to check with your attorney to ensure that the right to Elective Share has been waived. If you do not have a pre-nuptial or post-nuptial agreement, and in particular, if your marriage is a second or successive marriage, you may wish to have your estate plan reviewed. As a result of this change in the law, the Applicable Share of your spouse may have grown from one-sixth (1/6) to as much as one-half (1/2) of your estate. Even if your marriage is a first marriage, you may wish to have your estate plan reviewed if you are not leaving all of your estate to your spouse or if your estate plan provides for creation of trust(s) for the benefit of your spouse.