

Rule 5.360. Elective Share

(a) Election. An election to take the elective share may be filed by the surviving spouse, or on behalf of the surviving spouse by an attorney-in-fact or guardian of the property of the surviving spouse.

(1) Election by Surviving Spouse. An electing surviving spouse must file the election within the time required by law and promptly serve a copy of the election on the personal representative in the manner provided for service of formal notice.

(2) Election by Attorney-in-Fact or Guardian of the Property of Surviving Spouse.

(A) Petition for Approval. Before filing the election, the attorney-in-fact or guardian of the property of the surviving spouse must petition the court having jurisdiction of the probate proceeding for approval to make the election. The petition for approval must allege the authority to act on behalf of the surviving spouse and facts supporting the election.

(B) Notice of Petition. Upon receipt of the petition, the personal representative must promptly serve a copy of the petition by formal notice on all interested persons.

(C) Order Authorizing Election. If the election is approved, the order must include a finding that the election is in the best interests of the surviving spouse during the spouse's probable lifetime.

(D) Filing the Election. Upon entry of an order authorizing the filing of an election, the attorney-in-fact or guardian of the property must file the election within the later of the time provided by law or 30 days from service of the order and promptly serve a copy of the election on the personal representative in the manner provided for service of formal notice.

(b) Procedure for Election.

(1) Extension. Within the period provided by law to make the election, the surviving spouse or an attorney-in-fact or guardian of the property of the surviving spouse may petition the court for an extension of time for making an election or for approval to make the election. After notice and hearing the court for good cause shown may extend the time for election. If the court grants the petition for an extension, the election must be filed within the time allowed by the extension.

(2) Withdrawal of Election. The surviving spouse, an attorney-in-fact, a guardian of the property of the surviving spouse, or the personal representative of the surviving spouse's estate may withdraw the election within the time provided by law.

(3) Service of Notice. Upon receipt of an election the personal representative must serve a notice of election within 20 days following service of the election, together with a copy of the election, on all interested persons in the manner provided for service of formal notice. The notice of election must indicate the names and addresses of the attorneys for the surviving spouse and the personal representative and must state that:

(A) Persons receiving a notice of election may be required to contribute toward the satisfaction of the elective share;

(B) Objections to the election must be served within 20 days after service of the copy of the notice of election; and

(C) If no objection to the election is timely served, an order determining the surviving spouse's entitlement to the elective share may be granted without further notice.

(4) Objection to Election. Within 20 days after service of the notice of election, an interested person may serve an objection to the election which must state with particularity the grounds on which the objection is based. The objecting party must serve copies of the objection on the surviving spouse and the personal representative. If an objection is served, the personal representative must promptly serve a copy of the objection on all other interested persons who have not previously been served with a copy of the objection.

(c) Determination of Entitlement.

(1) No Objection Served. If no objection to the election is timely served, the court must enter an order determining the spouse's entitlement to the elective share.

(2) Objection Served. If an objection to the election is timely served, the court must determine the surviving spouse's entitlement to the elective share after notice and hearing.

(d) Procedure to Determine Amount of Elective Share and Contribution.

(1) Petition by Personal Representative. After entry of the order determining the surviving spouse's entitlement to the elective share, the personal representative must file and serve a petition to determine the amount of the elective share. The petition must

(A) Give the name and address of each direct recipient known to the personal representative;

(B) Describe the proposed distribution of assets to satisfy the elective share, and the time and manner of distribution; and

(C) Identify those direct recipients, if any, from whom a specified contribution will be required and state the amount of contribution sought from each.

(2) Service of Inventory. The inventory of the elective estate required by rule 5.340, together with the petition, must be served within 60 days after entry of the order determining entitlement to the elective share on all interested persons in the manner provided for service of formal notice.

(3) Petition by Spouse. If the personal representative does not file the petition to determine the amount of the elective share within 90 days from rendition of the order of entitlement, the electing spouse or the attorney-in-fact or the guardian of the property or personal representative of the electing spouse may file the petition specifying as particularly as is known the value of the elective share.

(4) Objection to Amount of Elective Share. Within 20 days after service of the petition to determine the amount of the elective share, an interested person may serve an objection to the amount of or distribution of assets to satisfy the elective share. The objection must state with particularity the grounds on which the objection is based. The objecting party must serve copies of the objection on the surviving spouse and the personal representative. If an objection is served, the personal representative must promptly serve a copy of the objection on all interested persons who have not previously been served.

(5) Determination of Amount of Elective Share and Contribution.

(A) No Objection Served. If no objection is timely served to the petition to determine the amount of the elective share, the court must enter an order on the petition.

(B) Objection Served. If an objection is timely served to the petition to determine the amount of the elective share, the court must determine the amount of the elective share and contribution after notice and hearing.

(6) Order Determining Amount of Elective Share and Contribution. The order must:

(A) Set forth the amount of the elective share;

(B) Identify the assets to be distributed to the surviving spouse in satisfaction of the elective share; and

(C) If contribution is necessary, specify the amount of contribution for which each direct recipient is liable.

(e) Relief from Duty to Enforce Contribution. A petition to relieve the personal representative from the duty to enforce contribution must state the grounds on which it is based and notice must be served on interested persons.