WEST VIRGINIA CODE: §42-3-1

§42-3-1. Right to elective share.

(a) The surviving spouse of a decedent who dies domiciled in this state has a right of election, against either the will or the intestate share, under the limitations and conditions stated in this part, to take the elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, in accordance with the following schedule:

If the decedent and the spouse were married to each other | The elective-share percentage is:

Less than 1 year | Supplemental Amount Only

1 year but less than 2 years | 3% of the augmented estate.

2 years but less than 3 years | 6% of the augmented estate.

3 years but less than 4 years | 9% of the augmented estate.

4 years but less than 5 years | 12% of the augmented estate.

5 years but less than 6 years | 15% of the augmented estate.

6 years but less than 7 years | 18% of the augmented estate.

7 years but less than 8 years | 21% of the augmented estate.

8 years but less than 9 years | 24% of the augmented estate.

9 years but less than 10 years | 27% of the augmented estate.

10 years but less than 11 years | 30% of the augmented estate.

11 years but less than 12 years | 34% of the augmented estate.

12 years but less than 13 years | 38% of the augmented estate.

13 years but less than 14 years | 42% of the augmented estate.

14 years but less than 15 years | 46% of the augmented estate.

15 years or more | 50% of the augmented estate.

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(b) If the sum of the amounts described in subdivisions (3) and (4), subsection (b), section two of this article, and subdivisions (1) and (3), subsection (a), section six of this article, and that part of the elective-share amount payable from the decedent's probate and reclaimable estates under subsections (b) and (c), section six of this article, is less than $25,000, the surviving spouse is entitled to a supplemental elective-share amount equal to $25,000, minus the sum of the amounts described in said sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's reclaimable estate in the order of priority set forth in subsections (b) and (c), section six of this article.

(c) The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

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