WEST VIRGINIA CODE: §42-3-4

§42-3-4. Proceeding for elective share; time limit.

(a) Except as provided in subsection (b) of this section, the election must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of the decedent's death, or within six months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse must serve a copy of the petition for the elective share on, and must give written notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests may be adversely affected by the taking of the elective share. The decedent's reclaimable estate, described in subdivision (2), subsection (b), section two of this article, is not included within the augmented estate for the purpose of computing the elective share, if the petition is filed more than nine months after the decedent's death.

(b) Within nine months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within nine months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's reclaimable estate, against whom the spouse chooses to proceed under subsection (d) of this section, the court for cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's reclaimable estate, described in subdivision (2), subsection (b), section two of this article, in the hands of those persons against whom the spouse chooses to proceed under subsection (d) of this section, is not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts, but is excluded for the purpose of satisfying the elective share amount and the supplemental elective share amount under subsections (b) and (c), section six of this article, if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

(c) The surviving spouse may withdraw his or her demand for an elective share at any time before entry of a final determination by the court.

(d) After notice and hearing, the court shall determine the elective share and supplemental elective-share amounts and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under section six of this article. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding 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 he or she would have been

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under section two of this article had relief been secured against all persons subject to contribution.

(e) An order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

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