WEST VIRGINIA CODE: §42-3-6

§42-3-6. Charging spouse with owned assets and gifts received; liability of others for balance of elective share.

(a) In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's reclaimable estate:

(1) Amounts included in the augmented estate which pass or have passed to the surviving spouse by testate or intestate succession;

(2) Amounts included in the augmented estate under subdivision (3), subsection (b), section two of this article;

(3) Amounts included in the augmented estate which would have passed to the spouse but were disclaimed; and

(4) Amounts included in the augmented estate under subdivision (4), subsection (b), section two of this article up to the applicable percentage thereof. For the purposes of this subsection, the "applicable percentage" is twice the elective-share percentage set forth in the schedule in section one of this article appropriate to the length of time the spouse and the decedent were married to each other.

(b) If, after the application of subsection (a), the elective-share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's probate estate and that portion of the decedent's reclaimable estate other than amounts irrevocably transferred within two years before the decedent's death 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 reclaimable estate are so applied 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 that portion of the decedent's reclaimable estate in proportion to the value of their interests therein.

(c) If, after the application of subsections (a) and (b) of this section, the elective share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's reclaimable estate is so applied that liability for the unsatisfied balance of the elective share or supplemental elective-share amount is equitably apportioned among the recipients of that portion of the decedent's reclaimable estate in proportion to the value of their interests therein.

(d) Only original recipients of the reclaimable estate described in subdivision (2), subsection (b), section two of this article, and the donees of the recipients of the reclaimable estate to

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the extent the original recipients or their donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective share or supplemental elective-share amount. A person liable to make contribution may choose to give up the proportional part of the reclaimable estate or to pay the value of the amount for which he or she is liable.

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