

[3]
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A Professional Corporation
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Attorneys for [2]

**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH**

IN THE MATTER OF THE ESTATE OF

[1],

Deceased.

**NOTICE OF INTENTION TO FILE
PETITION FOR SPOUSAL ELECTIVE
SHARE**

Case No.

[2], the surviving spouse of the decedent, gives you notice that (s)he intends to file a petition for the spousal elective share under Utah law. This notice is given to you pursuant to UCA § 75-2-214, which provides for certain liabilities of payors and third persons relating to payments made or actions taken after receipt of this sort of notice, and which also provides certain protections for such payors and third parties under certain circumstance including through the procedure available to such payors and third persons pursuant to UCA § 75-2-214(2).

DATED this ____ day of _____, 20__.

PARSONS KINGHORN HARRIS

By: _____
[3]
Attorneys for [2]

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 20__, a true and correct copy of the foregoing NOTICE OF INTENTION TO FILE PETITION FOR SPOUSAL ELECTIVE SHARE was transmitted via U.S. Mail, postage prepaid, by [registered] [certified] mail, return receipt requested, to the following:

[4] (____)
PARSONS KINGHORN HARRIS
111 East Broadway, 11th Floor
Salt Lake City, Utah 84111
Telephone: (801) 363-4300

Attorney for Petitioner [2]

**IN THE _____ JUDICIAL DISTRICT
FOR _____ COUNTY, STATE OF UTAH**

In the Matter of the Estate of,

[1]

Deceased.

**PETITION FOR SPOUSE'S ELECTIVE
SHARE**

Case No. _____

Petitioner, [2], states and represents to the court that:

1. Petitioner is the surviving spouse of [1], who died on _____, 200____.
2. At the time of death the decedent was domiciled in the State of Utah.
3. (a) ___ Nine months or less has passed since the decedent's death. (b) ___ More than nine months has passed since the decedent's death, but six months or less have passed since the probate of the decedent's will.

4. Petitioner is entitled to an elective share of decedent's estate in [the amount set forth in **Schedule I** and its subschedules attached and incorporated by this reference][an amount to be determined].

5. Petitioner has mailed or delivered a copy of this petition to [3], the personal representative of the estate of the decedent.

6. The names and addresses of persons interested in the estate and any distributees and recipients of portions of the augmented net estate whose interest may be adversely affected by the taking of the elective share are as follows:

Name

Address

7. [This Petition is made in the alternative to other rights to which the Petitioner may be entitled, including, but not limited to, entitlement as an heir of decedent or as the beneficiary under any dispositive instrument or under any constructive trust imposed for unjust enrichment or otherwise, entitlement to recovery of assets [for any reason] [by reason of fraudulent transfers, or by reason of setting aside of purported transfers on account of fraud, duress, lack of capacity, or otherwise], and so on. Such other matters may be raised in these or other proceedings as allowed by law, and rights relating to all such other matters are reserved. Further, the right to name other affected persons is reserved.]

PETITIONER REQUESTS THAT:

1. The Court fix a time and place of hearing [after time for adequate discovery].
2. Notice be given as required by law.

3. The Court determine the amount to which petitioner is entitled as an elective share.

4. The Court order payment of the elective share as appropriate.

DATED: _____

[2]

Signature, typed or printed name, address, and
telephone number of petitioner.

DATED: _____

[4], Attorney for Petitioner

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the foregoing Petition for Spouse's
Elective Share, postage prepaid, to the following:

IN THE _____ JUDICIAL DISTRICT COURT
FOR _____ COUNTY, STATE OF UTAH

In the Matter of the Estate of

_____ ,

Deceased.

**SCHEDULE I TO PETITION FOR
ELECTIVE SHARE: CALCULATION
OF ELECTIVE SHARE OF SURVIVING
SPOUSE**

Case No. _____

This Schedule I is attached to the Petition for Elective Share filed by _____ as the surviving spouse of the above-named decedent. This Schedule I shows the calculation of the elective share and of the amount of the elective share remaining payable to the surviving spouse. Attached to this Schedule I are Subschedules I-A through I-D, which relate to the inclusion classes of assets described in UCA §§ 75-2-204 through 75-2-207, which inclusion classes make up the family's augmented estate under UCA § 75-2-203. Those Subschedules show the allocation between the separate and nonseparate categories of the property interests, debts, expenses, and exempt property, homestead, and allowances of or allocable to the decedent and survivor. See UCA §§ 75-2-204 through 75-2-208. Further, attached to each such Subschedule I-A through I-D are further subschedules labeled I-A-(a) etc., I-B-(a) etc., and so on, which for

each asset in a given inclusion class show the asset-by-asset allocations of the contributions by each spouse from separate or nonseparate sources.

1. Assets Classified by Inclusion Class and Allocated as Separate or Nonseparate.

This item shows in column (1) the summary for each inclusion class of the separate or nonseparate sources of the property interests covered by that class, and in column (2) the amount treated as paid, for purposes of calculating other amounts remaining payable to the surviving spouse for elective share purposes, which are amounts passing to the survivor on the death of the decedent by probate or nonprobate transfers, or nonseparate property owned by the surviving spouse. UCA § 75-2-209. Item (f) in column (1) breaks out the separate property of the survivor contributed to enhance the separate property of decedent (by debt payments and improvements) as described in UCA § 75-2-208(4). Such enhancement contributions and others derived from joint or commingled contributions are included as nonseparate property of decedent in item (c). Any cap adjustment for enhancement contributions required under UCA § 75-2-208(4), last sentence, have been made on the asset subschedules.

A. Class A: Decedent's Probate Estate (See Subschedule I-A) UCA § 75-2-204

	<u>(1) Equity Amount</u>	<u>(2) Survivor's Portion Treated as Paid</u>
(a) Equity Total	\$ _____	N/A
(b) Allocable from Decedent's Separate Property	\$ _____	\$ _____
(c) Allocable from Decedent's Nonseparate Property	\$ _____	\$ _____
(d) Allocable from Survivor's Separate Property	\$ _____	N/A
(e) Allocable from Survivor's Nonseparate Property	\$ _____	\$ _____
(f) Amount in (c) from Survivor's Separate	\$ _____	N/A

B. Class B: Decedent's Nonprobate Transfers to Others (See Subschedule I-B) UCA § 75-2-205

(a)	Equity Total	\$ _____	N/A
(b)	Allocable from Decedent's Separate Property	\$ _____	N/A
(c)	Allocable from Decedent's Nonseparate Property	\$ _____	N/A
(d)	Allocable from Survivor's Separate Property	\$ _____	N/A
(e)	Allocable from Survivor's Nonseparate Property	\$ _____	N/A
(f)	Amount in (c) from Survivor's Separate	\$ _____	N/A

C. Class C: Decedent's Nonprobate Transfers at Death to Surviving Spouse (See Subschedule I-C) UCA § 75-2-206

(a)	Equity Total	\$ _____	N/A
(b)	Allocable from Decedent's Separate Property	\$ _____	\$ _____
(c)	Allocable from Decedent's Nonseparate Property	\$ _____	\$ _____
(d)	Allocable from Survivor's Separate Property	\$ _____	N/A
(e)	Allocable from Survivor's Nonseparate Property	\$ _____	\$ _____
(f)	Amount in (c) from Survivor's Separate	\$ _____	N/A

D. Class D: Survivor's Assets and Transfers to Others (See Subschedule I-D) UCA § 75-2-207

(a)	Equity Total	\$ _____	\$ _____
(b)	Allocable from Decedent's Separate Property	\$ _____	\$ _____
(c)	Allocable from Decedent's Nonseparate Property	\$ _____	\$ _____
(d)	Allocable from Survivor's Separate Property	\$ _____	\$ _____
(e)	Allocable from Survivor's Nonseparate Property	\$ _____	\$ _____

2. Family Augmented Estate by Inclusion Class Reduced by Certain Separate Property of Decedent and of Surviving Spouse UCA §§ 75-2-203 and 75-2-208.

A.	Class A: Column 1 Item (a) less item (b)	\$ _____
B.	Class B: Column 1 Item (a) less item (b)	\$ _____
C.	Class C: Column 1 Item (a) less item (b)	\$ _____
D.	Class D: Column 1 Item (a) less item (d)	\$ _____
	Total Family Augmented Estate	\$ _____

3. Gross Elective Share Entitlement Less Amounts Treated as Paid UCA §§ 75-2-202 and 75-2-209.

A.	1/3 of Family Augmented Estate - Gross Entitlement	\$ _____
B.	Homestead, Exempt Property, Family	

	Allowance (from Subschedule I-A)	(\$ _____)
C.	Class A: Column (2) Items (b), (c), & (e)	(\$ _____)
D.	Class C: Column (2) Items (b), (c), & (e)	(\$ _____)
E.	Class D: Column (2) Items (b), (c), & (e)	(\$ _____)
	Net Amount Remaining Payable to Surviving Spouse	\$ _____

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IN THE _____ JUDICIAL DISTRICT COURT
FOR _____ COUNTY, STATE OF UTAH

In the Matter of the Estate of,
_____,
Deceased.

SUBSCHEDULE I-A TO PETITION
FOR ELECTIVE SHARE:
DECEDENT'S PROBATE ESTATE

Case No. _____

As used in this Subschedule, these abbreviations have these meanings: D = Decedent; S = Surviving Spouse; Sep = Separate; Nonsep = Nonseparate. The assets labeled (a), (b), (c), and so on are described in the attached Asset Subschedules I-A-(a), I-A-(b), I-A-(c), and so on.

1. Asset Allocations Between Separate and Nonseparate Property Sources in Inclusion Class A, Decedent's Probate Estate UCA § 75-2-204.

**Summary of Asset Subschedules
I-A-(a) through (n)**

	<u>D Sep</u>	<u>D Nonsep</u>	<u>S Sep</u>	<u>S Nonsep</u>
(a) Asset (a):				
(b) Asset (b):				
(c) Asset (c):				
[etc.]				
Totals:	\$ _____	\$ _____	\$ _____	\$ _____
Percentages of Total:	_____ %	_____ %	_____ %	_____ %

2. Allocations of Debts, Expenses, and Allowances Between Separate and Nonseparate Property.

<u>Item</u>	<u>D Separate</u>	<u>D Nonseparate</u>	<u>S Separate</u>	<u>S Nonseparate</u>
Class A - Probate Estate	\$____ __% of gross value	\$____ __% of gross value	\$____ __% of gross value	\$____ __% of gross value
<u>Debt:</u>				
\$____ Mortgage	\$____(____%)	\$____(____%)	\$____(____%)	\$____(____%)
\$____ Other Secured	\$____(____%)	\$____(____%)	\$____(____%)	\$____(____%)
\$____ Unsecured	\$____(____%)	\$____(____%)	\$____(____%)	\$____(____%)
\$____ Funeral [Etc.]	\$____(____%)	\$____(____%)	\$____(____%)	\$____(____%)
\$____ Total Debt	\$____	\$____	\$____	\$____
 <u>Total Equity:</u>	 <u>D Separate Equity</u>	 <u>D Nonseparate Equity</u>	 <u>S Separate Equity</u>	 <u>S Nonseparate Equity</u>
\$____	\$____(____%)	\$____(____%)	\$____(____%)	\$____(____%)
 <u>Administrative Expenses:</u>				
– Probate filing and legal fees for petition and general administration, totaling \$____	\$____(____%)	\$____(____%)	\$____(____%)	\$____(____%)
– Personal Representative’s fees, totaling \$____	\$____(____%)	\$____(____%)	\$____(____%)	\$____(____%)
– Accountant’s fees for estate’s income tax returns and general estate matters totaling \$____	\$____(____%)	\$____(____%)	\$____(____%)	\$____(____%)
– Mortgage debt service payments, totaling \$____	\$____(____%)	\$____(____%)	\$____(____%)	\$____(____%)

- Real estate taxes, insurance, repair, and maintenance, totaling \$____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
- Other secured debt service payments, totaling \$____ [Etc.]	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ Total Expense	\$____	\$____	\$____	\$____
<u>Homestead, Exempt Property, and Allowances:</u> Paid to S	\$____ (100%)	-0-	-0-	-0-
\$____ Remaining Equity Value	\$____	\$____	\$____	\$____

3. Amount of Remaining Equity Value in second column (D Nonsep) which is allocable to surviving spouse's separate or to joint or commingled funds contributed to enhance decedent's separate property by debt payments and improvements as described in UCA § 75-2-208(4) (from the attached asset subschedules).

From Survivor's Separate \$ _____

From Joint or Commingled \$ _____

IN THE _____ JUDICIAL DISTRICT COURT
FOR _____ COUNTY, STATE OF UTAH

In the Matter of the Estate of,
_____,
Deceased.

**SUBSCHEDULE I-A-(a) TO PETITION
FOR ELECTIVE SHARE: PER ASSET
ALLOCATIONS BETWEEN
SEPARATE AND NONSEPARATE
PROPERTY CATEGORIES**

Case No. _____

As used in this Subschedule, these abbreviations have these meanings: D = Decedent; S = Surviving Spouse; Sep = Separate; Nonsep = Nonseparate. The assets labeled (a), (b), (c), and so on are described in the attached Asset Subschedules I-A(a)-(a), I-A(a)-(b), I-A(a)-(c), and so on.

1. This Subschedule I-A-(a) relates to this asset:

**Summary of Asset Subschedules
I-A(a)-(a) through (n)**

	<u>D Sep</u>	<u>D Nonsep</u>	<u>S Sep</u>	<u>S Nonsep</u>
(a) Asset (a):				
(b) Asset (b):				
(c) Asset (c):				
[etc.]				
Totals:	\$ _____	\$ _____	\$ _____	\$ _____

Percentages of Total: ____% ____% ____% ____%

2. Allocations of Debts, Expenses, and Allowances Between Separate and Nonseparate Property.

<u>Item</u>	<u>D Separate</u>	<u>D Nonseparate</u>	<u>S Separate</u>	<u>S Nonseparate</u>
Class C - Assets	\$ ____ % of gross value	\$ ____ % of gross value	\$ ____ % of gross value	\$ ____ % of gross value
<u>Debt:</u>				
\$ ____	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)
\$ ____	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)
\$ ____	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)
\$ ____	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)
[Etc.]				
\$ ____ Total Debt	\$ ____	\$ ____	\$ ____	\$ ____
 <u>Total Equity:</u>	<u>D Separate Equity</u>	<u>D Nonseparate</u>	<u>S Separate Equity</u>	<u>S Nonseparate</u>
\$ ____	\$ ____ (____%)	<u>Equity</u>	\$ ____ (____%)	<u>Equity</u>
		\$ ____ (____%)		\$ ____ (____%)
 <u>Expenses</u>				
\$ ____	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)
\$ ____	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)
\$ ____	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)
\$ ____	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)
\$ ____	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)
\$ ____	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)	\$ ____ (____%)
[Etc.]				
\$ ____ Total Expenses	\$ ____	\$ ____	\$ ____	\$ ____
 \$ ____ Remaining Equity Value	\$ ____	\$ ____	\$ ____	\$ ____

3. Amount of Remaining Equity Value in second column (D Nonsep) which is allocable to surviving spouse's separate or to joint or commingled funds contributed to enhance decedent's separate property by debt payments and improvements as described in UCA § 75-2-208(4).

From Survivor's Separate \$ _____

From Joint or Commingled \$ _____

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**IN THE _____ JUDICIAL DISTRICT COURT
FOR _____ COUNTY, STATE OF UTAH**

In the Matter of the Estate of,
_____,
Deceased.

**SUBSCHEDULE I-B TO PETITION
FOR ELECTIVE SHARE:
DECEDENT'S NONPROBATE
TRANSFERS TO OTHERS**

Case No. _____

As used in this Subschedule, these abbreviations have these meanings: D = Decedent; S = Surviving Spouse; Sep = Separate; Nonsep = Nonseparate. The assets labeled (a), (b), (c), and so on are described in the attached Asset Subschedules I-B-(a), I-B-(b), I-B-(c), and so on.

1. Asset Allocations Between Separate and Nonseparate Property Sources in Inclusion Class B, decedent's nonprobate transfers to others, UCA § 75-2-205.

**Summary of Asset Subschedules
I-B-(a) through (n)**

	<u>D Sep</u>	<u>D Nonsep</u>	<u>S Sep</u>	<u>S Nonsep</u>
(a) Asset (a):				
(b) Asset (b):				
(c) Asset (c):				
[etc.]				
Totals:	\$ _____	\$ _____	\$ _____	\$ _____

Percentages of Total: ____% ____% ____% ____%

2. Allocations of Debts, Expenses, and Allowances Between Separate and Nonseparate Property.

<u>Item</u>	<u>D Separate</u>	<u>D Nonseparate</u>	<u>S Separate</u>	<u>S Nonseparate</u>
Class B - Assets	\$____ __% of gross value	\$____ __% of gross value	\$____ __% of gross value	\$____ __% of gross value
<u>Debt:</u>				
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
[Etc.]				
\$____ Total Debt	\$____	\$____	\$____	\$____
<u>Total Equity:</u>	<u>D Separate Equity</u>	<u>D Nonseparate Equity</u>	<u>S Separate Equity</u>	<u>S Nonseparate Equity</u>
\$____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
<u>Expenses - Allowances</u>				
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
[Etc.]				
\$____ Total Expenses	\$____	\$____	\$____	\$____
\$____ Remaining Equity Value	\$____	\$____	\$____	\$____

3. Amount of Remaining Equity Value in second column (D Nonsep) which is allocable to surviving spouse's separate or to joint or commingled funds contributed to enhance decedent's separate property by debt payments and improvements as described in UCA § 75-2-208(4) (from the attached asset subschedules).

From Survivor's Separate \$ _____

From Joint or Commingled \$ _____

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IN THE _____ JUDICIAL DISTRICT COURT
FOR _____ COUNTY, STATE OF UTAH

In the Matter of the Estate of,
_____,
Deceased.

**SUBSCHEDULE I-C TO PETITION
FOR ELECTIVE SHARE:
DECEDENT'S NONPROBATE
TRANSFERS TO SURVIVING SPOUSE**

Case No. _____

As used in this Subschedule, these abbreviations have these meanings: D = Decedent; S = Surviving Spouse; Sep = Separate; Nonsep = Nonseparate. The assets labeled (a), (b), (c), and so on are described in the attached Asset Subschedules I-C-(a), I-C-(b), I-C-(c), and so on.

1. Asset Allocations Between Separate and Nonseparate Property Sources in Inclusion Class B, decedent's nonprobate transfers to surviving spouse, UCA § 75-2-206.

**Summary of Asset Subschedules
I-C-(a) through (n)**

	<u>D Sep</u>	<u>D Nonsep</u>	<u>S Sep</u>	<u>S Nonsep</u>
(a) Asset (a):				
(b) Asset (b):				
(c) Asset (c):				
[etc.]				
Totals:	\$ _____	\$ _____	\$ _____	\$ _____

Percentages of Total: ____% ____% ____% ____%

2. Allocations of Debts, Expenses, and Allowances Between Separate and Nonseparate Property.

<u>Item</u>	<u>D Separate</u>	<u>D Nonseparate</u>	<u>S Separate</u>	<u>S Nonseparate</u>
Class C - Assets	\$____ ____% of gross value	\$____ ____% of gross value	\$____ ____% of gross value	\$____ ____% of gross value
<u>Debt:</u>				
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
[Etc.]				
\$____ Total Debt	\$____	\$____	\$____	\$____
<u>Total Equity:</u>	<u>D Separate Equity</u>	<u>D Nonseparate Equity</u>	<u>S Separate Equity</u>	<u>S Nonseparate Equity</u>
\$____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
<u>Expenses - Allowances</u>				
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
[Etc.]				
\$____ Total Expenses	\$____	\$____	\$____	\$____
\$____ Remaining Equity Value	\$____	\$____	\$____	\$____

3. Amount of Remaining Equity Value in second column (D Nonsep) which is allocable to surviving spouse's separate or to joint or commingled funds contributed to enhance decedent's separate property by debt payments and improvements as described in UCA § 75-2-208(4) (from the asset subschedules).

From Survivor's Separate \$ _____

From Joint or Commingled \$ _____

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IN THE _____ JUDICIAL DISTRICT COURT
FOR _____ COUNTY, STATE OF UTAH

In the Matter of the Estate of,

_____ ,

Deceased.

**SUBSCHEDULE I-D TO PETITION
FOR ELECTIVE SHARE: SURVIVING
SPOUSE'S PROPERTY AND
NONPROBATE TRANSFERS TO
OTHERS**

Case No. _____

As used in this Subschedule, these abbreviations have these meanings: D = Decedent; S = Surviving Spouse; Sep = Separate; Nonsep = Nonseparate. The assets labeled (a), (b), (c), and so on are described in the attached Asset Subschedules I-D-(a), I-D-(b), I-D-(c), and so on.

1. Asset Allocations Between Separate and Nonseparate Property Sources in Inclusion Class D, to surviving spouse's property and nonprobate transfers to others, UCA § 75-2-207.

**Summary of Asset Subschedules
I-D-(a) through (n)**

D Sep D Nonsep S Sep S Nonsep

(a) Asset (a):
(b) Asset (b):
(c) Asset (c):
[etc.]

Totals: \$____ \$____ \$____ \$____

Percentages of Total: ____% ____% ____% ____%

2. Allocations of Debts, Expenses, and Allowances Between Separate and Nonseparate Property.

<u>Item</u>	<u>D Separate</u>	<u>D Nonseparate</u>	<u>S Separate</u>	<u>S Nonseparate</u>
Class D - Assets	\$____ ____% of gross value	\$____ ____% of gross value	\$____ ____% of gross value	\$____ ____% of gross value
<u>Debt:</u>				
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
\$____ _____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
[Etc.]				
\$____ Total Debt	\$____	\$____	\$____	\$____
<u>Total Equity:</u>	<u>D Separate Equity</u>	<u>D Nonseparate Equity</u>	<u>S Separate Equity</u>	<u>S Nonseparate Equity</u>
\$____	\$____ (____%)	\$____ (____%)	\$____ (____%)	\$____ (____%)
<u>Expenses -</u>				
<u>Allowances - N/A</u>				
\$____ Remaining Equity Value	\$____	\$____	\$____	\$____

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IN THE _____ JUDICIAL DISTRICT COURT
FOR _____ COUNTY, STATE OF UTAH

In the Matter of the Estate of,
_____,
Deceased.

SUBSCHEDULE I-__-() TO PETITION
FOR ELECTIVE SHARE: PER ASSET
ALLOCATIONS BETWEEN
SEPARATE AND NONSEPARATE
PROPERTY CATEGORIES -
PROPERTY OF DECEDENT

Case No. _____

1. This Subschedule I-__-() relates to this asset: _____ which is part of Inclusion Category ____ of the decedent.

2. Such asset is valued at \$ _____ at decedent's date of death. All contributions toward the asset total \$ _____. Appreciation over all contributions is \$ _____, which appreciation is allocated monthly at \$ _____ per month from the month of the first contribution or acquisition to the month of death (_____ number of months).

Source of Contributions for Asset (a)

<u>Contribution Time and Type</u>	<u>A Decedent Separate</u>	<u>B Decedent Nonseparate</u>	<u>C Surv. Separate</u>	<u>D Surv. Nonseparate</u>	<u>E Joint or Commingled Enhancement</u>	<u>F Survivor Separate Enhancement</u>
<u>Month x</u>						
- Acquisition						
Interim Total						
Interim %age						
<u>Month x+n</u>						
- Contribution						
- Allocated appreciation from month x						
- Interim Total						
- Interim %age						
<u>Month x+n+m</u>						
- Contribution						
- Allocated appreciation from month x+n						
- Interim Total						
- Interim %age						
... and so on through date of death.						
- Final Total	_____	_____	_____	_____	_____	_____
- Final %age	_____	_____	_____	_____	_____	_____
- Value Allocation	_____	_____	_____	_____	_____	_____

3. Amounts allocable to survivor's separate property enhancement contributions to decedent's separate property (debt payments or improvements) under UCA § 75-2-208(4) of \$_____ (from column F above) plus amounts allocable to joint and commingled enhancement contributions of \$_____ (from column E above) equals \$_____ of total amounts allocated to enhancement contributions. This total is compared to amounts allocable to decedent's separate property contributions of \$_____ (from column A above) and cannot exceed such amount for purposes of determining decedent's separate share proportion. UCA § 75-2-208(4), last sentence. The final percentage and value allocations above are thus [unchanged.] [adjusted to the following:]

Contribution Time and Type	A Decedent Separate	B Decedent Nonseparate	C Surv. Separate	D Surv. Nonseparate	E Joint or Commingled Enhancement	F Survivor Separate Enhancement
Final %age	_____	_____	_____	_____	_____	_____
Final Value Allocation	_____	_____	_____	_____	_____	_____

4. The amounts in column C relate to contributions to this asset from the surviving spouse's separate property, but which are not for the enhancement contributions of debt payments or improvements. The amounts in column F are survivor's separate enhancement contributions of debt payments or improvements.

IN THE _____ JUDICIAL DISTRICT COURT
FOR _____ COUNTY, STATE OF UTAH

In the Matter of the Estate of,

_____ ,

Deceased.

SUBSCHEDULE I-__-() TO PETITION
FOR ELECTIVE SHARE: PER ASSET
ALLOCATIONS BETWEEN
SEPARATE AND NONSEPARATE
PROPERTY CATEGORIES -

PROPERTY OF SURVIVING SPOUSE

Case No. _____

1. This Subschedule I-__-() relates to this asset: _____ which is part of Inclusion Category ____ of the surviving spouse.

2. Such asset is valued at \$ _____ at decedent's date of death. All contributions toward the asset total \$ _____. Appreciation over all contributions is \$ _____, which appreciation is allocated monthly at \$ _____ per month from the month of the first contribution or acquisition to the month of death (_____ number of months).

Source of Contributions for Asset (a)

<u>Contribution Time and Type</u>	<u>Decedent Separate</u>	<u>Decedent Nonseparate</u>	<u>Surv. Separate</u>	<u>Surv. Nonseparate</u>
<u>Month x</u>				
- Acquisition				
Interim Total				
Interim %age				
<u>Month x+n</u>				
- Contribution				
- Allocated appreciation from month x				
- Interim Total				
- Interim %age				
<u>Month x+n+m</u>				
- Contribution				
- Allocated appreciation from month x+n				
- Interim Total				
- Interim %age				
... and so on through date of death.				
- Final Total	_____	_____	_____	_____
- Final %age	_____	_____	_____	_____
- Value Allocation	_____	_____	_____	_____

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[4] (____)

Salt Lake City, Utah 84111
Telephone: (801) _____

Attorney for Petitioner [2]

**IN THE _____ JUDICIAL DISTRICT
FOR _____ COUNTY, STATE OF UTAH**

In the Matter of the Estate of,

[1]

Deceased.

**ORDER GRANTING ELECTIVE
SHARE**

Case No. _____

Upon consideration of the Petition for Elective Share filed by [2], on _____, 200__,
the Court upon hearing, finds that proper notice has been given, that the petition was timely filed,
and that all requirements of the Utah Uniform Probate Code have been met in connection with
the petition, and

IT IS ORDERED that [2] is entitled to an elective share from the estate of the above-
named decedent in the amount of \$ _____ to be paid from the augmented estate or
by a contribution as appears appropriate in the following manner:

Dated this ____ day of _____, 20 ____.

BY THE COURT

DISTRICT JUDGE

UUPC spousal elective share provisions with proposed modest modifications

§ 75-2-201. Definitions

As used in this part:

(1) “Decedent's nonprobate transfers to others,” as used in sections other than Section 75-2-205, means the amounts that are included in the augmented estate under Section 75-2-205.

(2) “Fractional interest in property held in joint tenancy with the right of survivorship,” whether the fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

(3) “Marriage,” as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

(4) “Nonadverse party” means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that the person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is considered to have a beneficial interest in the property.

(5) “Power” or “power of appointment” includes a power to designate the beneficiary of a beneficiary designation.

(6) “Presently exercisable general power of appointment” means a power of appointment under which, at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power, held a power to create a present or future interest in himself, his creditors, his estate, or creditors of his estate, and includes a power to revoke or invade the principal of a trust or other property arrangement.

(7) “Probate estate” means property that would pass by intestate succession if the decedent died without a valid will.

(8) “Property” includes values subject to a beneficiary designation.

(9) “Right to income” includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement.

(10) “Transfer,” as it relates to a transfer by or of the decedent, includes:

- (a) an exercise or release of a presently exercisable general power of appointment held by the decedent;
- (b) a lapse at death of a presently exercisable general power of appointment held by the decedent; and
- (c) an exercise, release, or lapse of a general power of appointment that the decedent created in himself and of a power described in Subsection 75-2-205(2)(b) that the decedent conferred on a nonadverse party.

§ 75-2-202. Elective share--Supplemental elective share amount--Effect of election on statutory benefits--Nondomiciliary

(1) The surviving spouse of a decedent who dies domiciled in Utah has a right of election, under the limitations and conditions stated in this part, to take an elective-share amount equal to the value of 1/3 of the augmented estate.

(2) If the sum of the amounts described in Subsection 75-2-209(1), and that part of the elective-share amount payable from the decedent's probate estate and nonprobate transfers to others under Subsections 75-2-209(2) and (3) is less than \$75,000, the surviving spouse is entitled to a supplemental elective-share amount equal to \$75,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in Subsections 75-2-209(2) and (3).

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(3) If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against, but are in addition to, the elective-share and supplemental elective-share amounts.

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

§ 75-2-203. Composition of the augmented estate

Subject to Section 75-2-208 which provides for exclusions, valuation, and overlapping application, the value of the augmented estate, to the extent provided in Sections 75-2-204, 75-2-205, 75-2-206, and 75-2-207, consists of the sum of the values of all property, whether real or personal, movable or immovable, tangible or intangible, wherever situated, that constitute the decedent's net probate estate, the decedent's nonprobate transfers to others, the decedent's nonprobate transfers to the surviving spouse, and the surviving spouse's property and nonprobate transfers to others.

§ 75-2-204. Decedent's net probate estate

Unless excluded under Section 75-2-208, the value of the augmented estate includes the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance, family allowances, exempt property, and enforceable claims.

§ 75-2-205. Decedent's nonprobate transfers to others

Unless excluded under Section 75-2-208, the value of the augmented estate includes the value of the decedent's nonprobate transfers to others, not included under Section 75-2-204, of any of the types described in this section, in the amount provided respectively for each type of transfer:

(1) Property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent's death. Property included under this category consists of the property described in this Subsection (1).

(a)(i) Property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment.

(ii) The amount included is the value of the property subject to the power, to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse.

(b)(i) The decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship.

(ii) The amount included is the value of the decedent's fractional interest, to the extent the fractional interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse.

(c)(i) The decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship.

(ii) The amount included is the value of the decedent's ownership interest, to the extent the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.

(d) Proceeds of insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before death or if and to the extent the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds. The amount included is the value of the proceeds, to the extent they were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.

(2) Property transferred in any of the forms described in this Subsection (2) by the decedent during marriage:

(a)(i) Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent the decedent's right terminated at or continued beyond the decedent's death.

(ii) An irrevocable transfer in trust which includes a restriction on transfer of the decedent's interest as settlor and beneficiary as described in Section 25-6-14.

(iii) The amount included is the value of the fraction of the property to which the right or restriction related, to the extent the fraction of the property passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse.

(b)(i) Any transfer in which the decedent created a power over income or property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's estate, or creditors of the decedent's estate.

(ii) The amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse.

(iii) If the power is a power over both income and property and Subsection (2)(b)(ii) produces different amounts, the amount included is the greater amount.

(3) Property that passed during marriage and during the two-year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the types described in this Subsection (3).

(a)(i) Any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under Subsection (1)(a), (b), or (c), or under Subsection (2), if the right, interest, or power had not terminated until the decedent's death.

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(ii) The amount included is the value of the property that would have been included under Subsection (1)(a), (b), (c), or Subsection (2) if the property were valued at the time the right, interest, or power terminated, and is included only to the extent the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse.

(iii)(A) As used in this Subsection (3)(a), "termination," with respect to a right or interest in property, occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest, and, with respect to a power over property, occurs when the power terminated by exercise, release, lapse, default, or otherwise.

(B) With respect to a power described in Subsection (1)(a), "termination" occurs when the power terminated by exercise or release, but not otherwise.

(b) Any transfer of or relating to an insurance policy on the life of the decedent if the proceeds would have been included in the augmented estate under Subsection (1)(d) had the transfer not occurred. The amount included is the value of the insurance proceeds to the extent the proceeds were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.

(c)(i) Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse.

(ii) The amount included is the value of the transferred property to the extent the aggregate transfers to any one donee in either of the two years exceeded \$10,000.

§ 75-2-206. Decedent's nonprobate transfers to the surviving spouse

Excluding property passing to the surviving spouse under the federal Social Security system, any death benefits paid to the surviving spouse under any state workers' compensation law, and property excluded under Section 75-2-208, the value of the augmented estate includes the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which consist of all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death, including:

- (1) the decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;
- (2) the decedent's ownership interest in property or accounts held in co-ownership registration with the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving co-owner; and
- (3) all other property that would have been included in the augmented estate under Subsection 75-2-205(1) or (2) had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors.

§ 75-2-207. Surviving spouse's property and nonprobate transfers to others--Included property--Time of valuation

(1) Except to the extent included in the augmented estate under Section 75-2-204 or 75-2-206 or excluded under Section 75-2-208, the value of the augmented estate includes the value of:

- (a) property that was owned by the decedent's surviving spouse at the decedent's death, including:

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(i) the surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;

(ii) the surviving spouse's ownership interest in property or accounts held in co-ownership registration with the right of survivorship; and

(iii) property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to homestead allowance, family allowance, exempt property, or payments under the federal Social Security system; and

(b) property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests included under Subsection (1)(a)(i) or (ii), had the spouse been the decedent.

(2) Property included under this section is valued at the decedent's death, taking the fact that the decedent predeceased the spouse into account, but, for purposes of Subsections (1)(a)(i) and (ii), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts. For purposes of Subsection (1)(b), proceeds of insurance that would have been included in the spouse's nonprobate transfers to others under Subsection 75-2-205(1)(d) are not valued as if the spouse were deceased.

(3) The value of property included under this section is reduced by enforceable claims against the surviving spouse

§ 75-2-208. Exclusions, valuation, and overlapping application

(1) The value of any separate property of the decedent or the decedent's surviving spouse is excluded from the augmented estate even if it otherwise would be included in the augmented estate under Sections 75-2-204, 75-2-205, 75-2-206, and 75-2-207. Property is separate property if:

(a) owned at the date of the most recent marriage of the decedent and the decedent's surviving spouse;

(b) acquired by gift or disposition at death from a person other than the decedent or the decedent's surviving spouse;

(c) acquired in exchange for or with the proceeds of other separate property;

(d) designated as separate property by written waiver under Section 75-2-213; or

(e) acquired as a recovery for personal injury but only to the extent attributable to expenses paid or otherwise satisfied from separate property.

(2) Income attributable to investment, rental, licensing or other use of separate property during the most recent marriage of the decedent and the decedent's surviving spouse is separate property.

(3) Appreciation in the value of separate property during the most recent marriage of the decedent and the decedent's surviving spouse is separate property.

(4) Except as provided in this Subsection (4), any increase in the value of separate property due to improvements to or the reduction in debt owed against separate property during the most recent marriage of the decedent and the decedent's surviving spouse is separate property. An amount equal to any payment for improvements to or the reduction in debt owed against separate property of the decedent made during the most recent marriage of the decedent and the decedent's surviving spouse from the joint or commingled

funds of the decedent and the decedent's surviving spouse, or from the separate property of the surviving spouse, shall not be separate property to the extent of the amount actually paid for the improvements or the amount actually paid for the reduction in debt, including principal, interest, and other payments under the note, owed against separate property. The amount that is determined not to be separate property may not exceed the value of the separate property, except to the extent of the value attributable to the separate property of decedent's surviving spouse. Decedent's surviving spouse shall have a right to reimbursement for such value attributable to the separate property of decedent's surviving spouse payable out of decedent's separate property or the portion of the augmented estate not otherwise passing to decedent's surviving spouse.

(5) All property of the decedent or the decedent's surviving spouse, whether or not commingled, is rebuttably presumed not to be separate property.

(6) The value of any property is excluded from the decedent's nonprobate transfers to others:

(a) to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property; or

(b) if the property was transferred with the written joinder of, or if the transfer was consented to in writing by, the surviving spouse.

(7) The value of property:

(a) included in the augmented estate under Section 75-2-205, 75-2-206, or 75-2-207 is reduced in each category by enforceable claims against the included property; and

(b) includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal Social Security system.

(8) In case of overlapping application to the same property of the section or subsections of Section 75-2-205, 75-2-206, or 75-2-207, the property is included in the augmented estate under the provision yielding the greatest value, and under only one overlapping provision if they all yield the same value.

§ 75-2-209. Sources from which elective share payable--Elective share amount--Unsatisfied balance

(1) 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 nonprobate transfers to others:

(a) amounts included in the augmented estate under Section 75-2-204 that pass or have passed to the surviving spouse by testate or intestate succession and amounts included in the augmented estate under Section 75-2-206 other than those attributable to the personal service earnings of the decedent's surviving spouse during the most recent marriage of the decedent and the decedent's surviving spouse;

(b) amounts included in the augmented estate under Section 75-2-207, other than those attributable to the personal service earnings of the decedent's surviving spouse during the most recent marriage of the decedent and the decedent's surviving spouse;

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(c) amounts included in the augmented estate that are attributable to the decedent's surviving spouse's personal service earnings during the most recent marriage of the decedent and the decedent's surviving spouse to the extent such amounts exceed an amount equal to one-third of the augmented estate; and

(d) the value at the decedent's death of the decedent's separate property, as defined in Section 75-2-208, that passes or has passed from the decedent to the decedent's surviving spouse by reason of the decedent's death, whether by testate or intestate succession or by nonprobate transfer at the decedent's death,

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(d) the surviving spouse's homestead allowance, exempt property, and family allowance, if any

(2) If, after the application of Subsection (1), 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 in the decedent's nonprobate transfers to others, other than amounts included under Subsection 75-2-205(3)(a) or (c), 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 nonprobate transfers to others 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 of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

(3) If, after the application of Subsections (1) and (2), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others 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 the remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

§ 75-2-210. Personal liability of recipients

(1) Only original recipients of the decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others, to the extent the 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 decedent's nonprobate transfers to him or to pay the value of the amount for which he is liable.

(2) If any section or subsection of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to others, a person who, not for value, receives the payment, item of property, or any other benefit is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of that item of property or benefit, as provided in Section 75-2-209, to the person who would have been entitled to it were that section or subsection not preempted.

§ 75-2-211. Proceeding for elective share--Time limit

(1) Except as provided in Subsection (2), the election shall 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 shall give 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 will be adversely affected by the taking of the elective share. Except as provided in Subsection (2), the decedent's nonprobate transfers to others are 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.

(2) 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 nonprobate transfers to others, 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 nonprobate transfers to others are not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts, 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.

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

(4) 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 Sections 75-2-209 and 75-2-210. 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 would have been under Sections 75-2-209 and 75-2-210 had relief been secured against all persons subject to contribution.

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

§ 75-2-212. Right of election personal to surviving spouse--Incapacitated surviving spouse--Custodial trust

(1) The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under Subsection 75-2-211(1). If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by his conservator, guardian, or agent under the authority of a power of attorney.

(2) If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court shall set aside that portion of the elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others under Subsections 75-2-209(2) and (3) and shall appoint a trustee to administer that property for the support of the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. The trustee shall administer the trust in accordance with the following terms and such additional terms as the court determines appropriate:

(a) Expenditures of income and principal may be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to other support, income, and property of the surviving spouse exclusive of benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the surviving spouse shall qualify on the basis of need.

(b) During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property free of trust, by delivering to the trustee a writing signed by the surviving spouse declaring the termination.

(c) Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property in the following order:

- (i) under the residuary clause, if any, of the will of the predeceased spouse against whom the elective share was taken, as if that predeceased spouse died immediately after the surviving spouse; or
- (ii) to the predeceased spouse's heirs under Section 75-2-711.

§ 75-2-213. Waiver of right to elect and of other rights

(1) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse.

(2) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

- (a) he did not execute the waiver voluntarily; or
- (b) the waiver was unconscionable when it was executed and, before execution of the waiver, he:
 - (i) was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;
 - (ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and
 - (iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

(3) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(4) Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to him from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

§ 75-2-214. Protection of payors and other third parties

(1) Although under Section 75-2-205 a payment, item of property, or other benefit is included in the decedent's nonprobate transfers to others, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable for payments made or other actions taken after the payor or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed.

(2) A written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed shall be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as

a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property, and, upon its determination under Subsection 75-2-211(4), shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under Subsection 75-2-211(1) or, if filed, the demand for an elective share is withdrawn under Subsection 75-2-211(3), the court shall order disbursement to the designated beneficiary. Payments or transfers to the court or deposits made into court discharge the payor or other third party from all claims for amounts so paid or the value of property so transferred or deposited.

(3) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this part.

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