524.2-211 PROCEEDING FOR ELECTIVE SHARE; TIME LIMIT.

(a) Except as provided in paragraph (b), 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 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 paragraph (b), 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.

(b) Within nine months after a 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.

(c) The surviving spouse may withdraw a 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 sections 524.2-209 and 524.2-210. 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 would have been the case under sections 524.2-209 and 524.2-210 had relief been secured against all persons subject to contribution.

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

(f) Whether or not an election has been made under paragraph (a), the surviving spouse may elect statutory rights in the homestead by filing in the manner provided in this section a petition in which the spouse asserts the rights provided in section 524.2-402, provided that:

(1) when the homestead is subject to a testamentary disposition, the filing must be within nine months after the date of death, or within six months after the probate of the decedent's will, whichever limitation last expires; or

(2) where the homestead is subject to other disposition, the filing must be within nine months after the date of death.

The court may extend the time for election in the manner provided in paragraph (b).

History: *1994 c 472 s 25*