

Quick Intro Guide
The North Carolina Elective Share Law



Disinherited?

Left out of the Will?

How surviving spouses can get their fair, legal share.

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1. This guide is for you if...

This guide is for you if you were **disinherited** by your recently **deceased spouse**, your spouse was a **North Carolina** resident, and you are willing to take **legal action** to get your fair share.

Disinherited means your spouse left you little or nothing. This is usually done by:

- Leaving you out of the Will.
- Passing property through a trust.
- Naming other people as beneficiaries to bank accounts, retirement accounts, insurance policies.
- Creating joint accounts with right of survivorship.

Deceased spouse means you were legally married. This guide does not address disinherited children, parents, siblings, etc.

This guide looks at **North Carolina** law and applies to North Carolina estates.

You will need to take formal **legal action** by filing a lawsuit for a spousal elective share.

2. The North Carolina “Elective Share” law is your new best friend.

This guide is a very brief introduction to the **Elective Share law**. It is a powerful legal tool that allows disinherited **surviving spouses** to get a portion of their deceased spouse’s assets. This law can be the difference between inheriting nothing and getting a share worth a lot of money.

North Carolina created its Elective Share law in 2001 and made changes to it in 2009 and 2013. It is located in the North Carolina statutes at Chapter 30, Article 1A. The purpose is to help surviving spouses avoid financial disaster. It is similar to laws in many other states.

3. The cast of characters.

In an Elective Share lawsuit, there are several key roles. It is useful to know the legal term for each:

Petitioner: The Petitioner is the surviving spouse who is requesting the Elective Share. The Elective Share lawsuit is started by filing a **Petition**.

Executor: The Executor is the person in charge of your deceased spouse’s estate. In cases without a Will, the person in charge of the estate is called the **Adminstrator**.

Responsible Person: This is anyone who has received property from your spouse and may have to pay some of it to the Petitioner.

Clerk of Court: The Clerk of Superior Court oversees Elective Share requests and acts as judge.

4. A share of what?

The surviving spouse can get a portion of what is called the **Total Assets**. The Total Assets include what is in the estate, but it is much more than that. It includes property the deceased spouse owned or controlled at the time of death. This may include:

- Land and houses
- Bank accounts
- Retirement accounts (IRA, 401k, etc.)
- Life insurance benefits
- Assets in a revocable trust

5. How big a share?

The size of the Elective Share depends upon the length of the marriage:

- Less than 5 years: 15%
- Between 5 and 10 years: 25%
- Between 10 and 15 years: 33%
- 15 years or more: 50%

For Example: If there are \$300,000 of Net Total Assets, the share would be:

- Less than 5 years: \$45,000
- Between 5 and 10 years: \$75,000

- Between 10 and 15 years: \$100,000
- 15 years or more: \$150,000

(Estate claims, estate expenses, and attorney fees are deducted before the Elective Share is calculated)

6. Step 1: The Estate is Opened

Before you can file for an Elective Share, someone must open an estate and become the Executor. Usually there is a Will that names a specific person as the executor. The Elective Share lawsuit, called the **Petition**, is filed in the Estate case. The Clerk of Court oversees estate cases and Elective Share requests, and acts as judge if needed.

If nobody named in the Will has opened an estate, or if there is no Will, the surviving spouse may need to open the estate and become the Executor or Administrator.

7. Step 2: File the Elective Share Petition

The Elective Share lawsuit starts by filing a Petition in the Estate file. The Petition must be filed within six months of someone being appointed as Executor (or Administrator) of the Estate. The Petition must also be **served** (delivered in certain ways that create proof of delivery) on the Executor and all known Responsible Parties.

8. Step 3: Freeze Assets

It is a good idea to ask the Clerk of Court to freeze assets until the Elective Share is paid. Sometimes it requires a court hearing, depending upon the Clerk of Court.

9. Step 4: Find and value assets

What are the Total Assets and how much are they worth? This question must be answered before the surviving spouse can get his or her share. Sometimes this is easy, and sometimes it is difficult and creates a court battle. It helps if the surviving spouse was familiar with their spouse's assets: land, bank accounts, retirement accounts, life insurance, etc. The Executor of the estate is required to file a list of Total Assets and their values.

At best, everyone agrees on the list of assets and values from the Executor. But often there is some disagreement and negotiation about the values. If the surviving spouse believes there are more assets, he or she may investigate. If the sides cannot agree on a list of assets and values there may be a trial and the Clerk of Court will decide.

10. Step 5: Receive your share

This is the best part! The Executor is responsible for seeing that the Responsible Persons pay the surviving spouse. The payment may be in cash or may include assets like land or vehicles. There may be several Responsible Persons that have to give over assets to fulfill the Elective Share.

11. Resistance.

Getting your elective share would be fairly easy if there weren't other people involved. People who may not like you, and do not want to share land, money, and other assets with you. Often these situations involve blended families, and the surviving spouse is fighting with his or her in-laws. In my experience, they will delay paying the share and try to pay as little as possible. In the worst cases, they hide assets and fight every step of the way.

In representing surviving spouses, I try to get along with the other side, be reasonable, be courteous, and share information. The more cooperation the better. However, I am not surprised when the other side is not cooperative, and I must use the court system to move the case along or force payment of the elective share.

12. How long does it take to get my share?

How long it takes to get your share depends upon the time, amount, and complexity of the assets, and how much cooperation or conflict there is with the other side. Sometimes it takes a while to find all the assets and figure out how much they are worth. In other cases land must be sold, which can take several months. Most cases resolve within 6 months of filing, but high conflict or complex cases may take a year or more to resolve.

13. Hire an attorney?

Not only should you get an attorney, hire an attorney experienced with Elective Share cases. While the idea of the law is simple, the law itself is complex. It is like taxes. The idea of paying income tax is simple, but

when a lot of money is at stake, you want the best CPA or tax attorney. For good or bad, our legal system is extremely complicated and takes years of expertise to navigate. There are rules about what to file, deadlines of when to file, and formal hearings in court. To investigate assets, you may need to do “discovery”, which is itself a complex set of laws about how to force the other side to answer questions and provide documentation. Sometimes it is necessary to issue subpoenas or question live witnesses. It is also important to know how to negotiate and what is worth fighting over.

Find an attorney that you feel comfortable talking with, that you trust, and that is experienced in Elective Share cases. A good attorney-client relationship is a partnership of mutual respect. Lawsuits are always stressful, and a good attorney will keep you informed and let you know what to expect as your case progresses.

14. About the Author, attorney Lee Laskody.



Lee Laskody is a North Carolina licensed attorney. He has been in private practice since 1998. His practice focuses on Elective Share lawsuits and estate litigation. He is the founder of the Laskody Law Office P.C. in Carrboro, N.C.

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