



HOUSE BILL 736: Elective Share-Joint Accounts.

2019-2020 General Assembly

Committee:	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	Date:	June 16, 2020
Introduced by:	Reps. Zachary, Conrad, Howard	Prepared by:	Amy Darden
Analysis of:	Third Edition		Committee Counsel

OVERVIEW: *House Bill 736 would change the calculation of the amount of property subject to a surviving spouse's elective share as follows:*

- *Treat property held by a deceased spouse and surviving spouse as joint tenants with right of survivorship the same as property held by other persons.*
- *Treat all property held as joint tenants with right of survivorship as owned by the decedent only to the extent of the decedent's pro rata share of property. Contributions are presumed to equal the share owned. The presumption can be overcome by clear and convincing evidence.*

House Bill 736 would also impose a new \$200 fee for filing a claim for an elective share.

CURRENT LAW: Article 1A of Chapter 30 of the General Statutes requires that a certain percentage of a deceased, married person's assets pass to the surviving spouse, called an "elective share." The surviving spouse can elect to receive the elective share even if the will and contract rights (e.g., bank accounts, brokerage accounts, insurance) provide otherwise. A surviving spouse is entitled to a percentage of the deceased spouse's assets based on the length of the marriage:

Length of Marriage	Elective Share Amount
Less than 5 years	15% of Total Net Assets
5-10 years	25% of Total Net Assets
10-15 years	33% of Total Net Assets
15 or more years	50% of Total Net Assets

The two spouses are considered (for the calculation of the elective share) to equally own the property held as joint tenants with right of survivorship. Therefore, the deceased spouse is considered to own one-half of this property. No evidence can change this result.

For property owned by the decedent and others who are not the surviving spouse, the decedent is considered (for the calculation of the elective share) as owning all of the property held as joint tenants with right of survivorship. Clear and convincing evidence must be presented to prove contribution by another and keep the property from increasing the decedent's assets.

A \$120 fee applies when an estate is opened.

BILL ANALYSIS: House Bill 736 would change the calculation of property considered owned by the deceased spouse and subject to a claim by the surviving spouse for an elective share. Property held by the

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decedent and surviving spouse as joint tenants with right of survivorship would now be presumed to be owned by the decedent in an amount equal to the decedent's ownership percentage of the asset. This presumption can be rebutted by clear and convincing evidence in all cases involving property held as joint tenants with right of survivorship.

House Bill 736 would change the presumption that the decedent owns all property held jointly with right of survivorship. The new presumption is the decedent owns joint property to the extent of the decedent's ownership percentage.

House Bill 736 would not change the treatment of property held as tenants by the entirety.

The following table summarizes the current law and House Bill 736 if enacted:

Type of Ownership	<u>Current Law</u> Decedent's Ownership for Elective Share	<u>H736 if Enacted</u> Decedent's Ownership for Elective Share
Tenancy by the Entirety	50% No Rebuttal	50% No Rebuttal
Joint Tenant with Right of Survivorship with Spouse	50% No Rebuttal	Treated same as Joint Tenant with Right of Survivorship with Others
Joint Tenant with Right of Survivorship with Others	Presumption: 100% Rebuttal: clear and convincing evidence If you rebut, then Decedent's contribution plus pro rata share of remainder (not attributable to other joint tenant's contributions)	Presumption: Ownership % Rebuttal: clear and convincing evidence If you rebut, then Decedent's pro rata share attributable to their contribution

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EFFECTIVE DATE: House Bill 736 would have the following effective dates:

- The law change affecting the calculation of property considered owned by the deceased spouse becomes effective when law, applies to estates of decedents dying on or after that date, and to estate proceedings to determine the elective share which are not final on that date because the proceeding is subject to further judicial review.
- The new \$200 fee becomes effective December 1, 2019, and applies to estates of decedents dying on or after that date.