



HOUSE BILL 736: Elective Share-Joint Accounts.

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2019-2020 General Assembly

Committee:	House Judiciary. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	July 10, 2019
Introduced by:	Reps. Zachary, Conrad, Howard	Prepared by:	Brad Krehely
Analysis of:	PCS to First Edition H736-CSRNF-43		Committee Co-Counsel

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 736 limits the spousal share with respect to jointly held property to a rebuttable presumption of in-kind contribution unless otherwise established by clear and convincing evidence and requires a fee for filing a claim for an elective share.*

CURRENT LAW: Article 1A of Chapter 30 of the General Statutes governs the elective share. Elective shares require that a certain percentage of the estate’s assets be left to the surviving spouse, even if the will or estate plan provides otherwise. A surviving spouse is entitled to a percentage of his or her spouse’s estate, and the percentage varies depending on how long the couple was married. G.S. 30-3.2 (3f) defines total assets to include a sum of values of certain property. Under current law, a person who files a claim for an elective share is not required to pay a fee.

BILL ANALYSIS:

Section 1 provides that in determining "total assets" under G.S. 30-3.2(3f), property held as tenants by the entirety or jointly with the right of survivorship is included as follows:

- One-half of any property held by the decedent and the surviving spouse as tenants by the entirety. (Under current law, property held by the decedent and the surviving spouse as joint tenants with the right of survivorship is also included regardless of who contributed the property).
- Property held by the decedent and one or more other persons as joint tenants with the right of survivorship is included to the extent of decedent's pro rata share of property attributable to the decedent's contribution. The decedent and all other joint tenants are presumed to have contributed in-kind in accordance with their respective shares for jointly owned property. This presumption can be rebutted by clear and convincing evidence. (Under current law, the presumption is that the decedent contributed the jointly owned property unless contribution by another is proven by clear and convincing evidence).

Section 2 provides that a person who files a claim for an elective share must remit the sum of \$200.00 to the clerk of superior court of the county in which the primary administration of the estate lies.

EFFECTIVE DATE: The act is effective when it becomes law and applies to estates of decedents dying on or after that date.

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