



# HOUSE BILL 736: Elective Share-Joint Accounts.

2019-2020 General Assembly

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<b>Committee:</b>		<b>Date:</b>	July 24, 2019
<b>Introduced by:</b>	Reps. Zachary, Conrad, Howard	<b>Prepared by:</b>	Greg Roney
<b>Analysis of:</b>	Third Edition		Staff Attorney

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**OVERVIEW:** *House Bill 736 would change the calculation of the amount of property subject to a surviving spouse's claim for a minimum amount of assets from a deceased spouse ("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 ("elective share") of a deceased, married person's assets pass to the surviving spouse, 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.

Under current law, 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 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.

Under current law, 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.

Under current law, 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.

House Bill 736 changes 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.

A surviving spouse is more likely to have a right to an elective share when the deceased spouse's total assets are larger.

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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.

*Brad Krehely with the Legislative Analysis Division substantially contributed to this summary.*