

633.237 Presumption against filing elective share.

1. Following the appointment of a personal representative of the estate of the decedent, who is not the spouse, the personal representative shall cause to be served a written notice upon the surviving spouse pursuant to section 633.40, subsection 5, notifying the surviving spouse that unless, within four months after service of the notice, the spouse files an election in writing with the clerk of court electing the share as set forth in section 633.236 and sections 633.238 through 633.246, the spouse shall be deemed to take under the will or to receive the intestate share. If, within the four-month period following service of the notice, an affidavit is filed setting forth that the surviving spouse is incapable of making the election and does not have a conservator, the personal representative shall make application to the court for an order pursuant to section 633.244.

2. Following the death of a settlor of a revocable trust, the trustee of such revocable trust who is not the spouse shall cause to be served a written notice upon the surviving spouse pursuant to section 633.40, subsection 5, notifying the surviving spouse that unless, within four months after service of the notice, the spouse files an election with the trustee electing the share as set forth in section 633.236 and sections 633.238 through 633.246, the spouse shall be deemed to take under the terms of the revocable trust. If, within the four-month period following service of the notice, an affidavit is filed setting forth that the surviving spouse is incapable of making the election and does not have a conservator, the trustee shall make application to the court for an order pursuant to section 633.244.

3. If the surviving spouse has a conservator, notice shall be given to the conservator and the spouse pursuant to subsections 1 and 2.

4. The notice provisions under subsections 1 and 2 are not applicable if the surviving spouse is a personal representative of the estate or a trustee of a revocable trust or if the surviving spouse or the spouse's conservator files, at any time, an election to take under the will, receive the intestate share, or take under the revocable trust. If the surviving spouse fails to file an election under this section within four months of the decedent's death, it shall be conclusively presumed that the surviving spouse elects to take under the will, receive the intestate share, or take under the revocable trust.

5. Upon application of the surviving spouse or the spouse's conservator filed before the time for making the election expires, the court may extend the period in which the surviving spouse may make the election.

[C73, §2452; C97, §3376; S13, §3376; C24, 27, 31, 35, 39, §12007, 12010; C46, 50, 54, 58, 62, §636.22, 636.25; C66, 71, 73, 75, 77, 79, 81, §633.237]

84 Acts, ch 1080, §3; 88 Acts, ch 1064, §2; 2005 Acts, ch 38, §13; 2009 Acts, ch 52, §3, 14

[SP] 2009 amendment to subsection 4 applies to estates of decedents and revocable trusts of settlors dying on or after July 1, 2009; 2009 Acts, ch 52, §14