

### **633.237 Presumption that surviving spouse elects to take under will.**

If a voluntary election to take or refuse to take under a will has not been filed by a surviving spouse or the spouse's conservator, if any, within two months of the date of the second publication of notice of admission of the will to probate, and the surviving spouse is not the executor of the will, the executor shall cause to be served a written notice upon the surviving spouse and the spouse's conservator, if any, in the manner directed by the court, advising the surviving spouse and the spouse's conservator that the will of the decedent has been admitted to probate, stating the name of the court where the will was admitted and the date when the will was admitted to probate, and notifying the spouse and the spouse's conservator that unless within four months after service of the notice, the spouse or the spouse's conservator files an election in writing with the clerk of that court refusing to take under the will, the spouse shall take under the will. If the surviving spouse or the spouse's conservator files an election to take under the will at any time the requirements of this section for serving notice are waived. If within the period of four months an affidavit is filed setting forth that the surviving spouse is incapable to make the election and does not have a conservator, the court shall determine whether there shall be an election to take under or against the will in accordance with section 633.238 as the court deems appropriate under the circumstances. The court on application may, prior to the expiration of the period of four months, for cause shown, enter an order extending the time for making the election.

If the surviving spouse is an executor of the will and fails, within four months after the date of the second publication of notice of admission of the will to probate, to file with the clerk of the court an election to refuse to take under the will of the deceased, it shall be conclusively presumed that the survivor consents to the provisions of the will and elects to take under it. However, the court on application may, prior to the expiration of the period of four months, on cause shown, enter an order extending the time for making 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