

**633.238 Elective share of surviving spouse.**

1. The elective share of the surviving spouse shall be limited to all of the following:

a. One-third in value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage which have not been sold on execution or other judicial sale, and to which the surviving spouse has made no express written relinquishment of right.

b. All personal property that, at the time of death, was in the hands of the decedent as the head of a family, exempt from execution.

c. One-third of all personal property of the decedent that is not necessary for the payment of debts and charges.

d. One-third in value of the property held in trust not necessary for the payment of debts and charges over which the decedent was a grantor and retained at the time of death the power to alter, amend, or revoke the trust, or over which the decedent waived or rescinded any such power within one year of the date of death, and to which the surviving spouse has not made any express written relinquishment.

2. The elective share described in this section shall be in lieu of any property the spouse would otherwise receive under the last will and testament of the decedent, through intestacy, or under the terms of a revocable trust.

[C51, §1329, 1390, 1394, 1421; R60, §2361, 2422, 2477, 2479; C73, §2371, 2436, 2440; C97, §3312, 3362, 3366; C24, 27, 31, 35, 39, §11918, 11986, 11990, 11991; C46, 50, 54, 58, 62, §635.7, 636.1, 636.5, 636.6; C66, 71, 73, 75, 77, 79, 81, §633.238]

2005 Acts, ch 38, §14; 2009 Acts, ch 52, §4, 14

Referred to in §614.14, 633.236, 633.237, 633.239, 633.240, 633.246

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