

**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, including but not limited to any relinquishments of rights described in paragraph “d”.

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. (1) 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 settlor and retained at the time of death the power to alter, amend, or revoke the trust, or over which the decedent waived or rescinded any such power within one year of the date of death, and to which the surviving spouse has not made any express written relinquishment in compliance with subparagraph (2).

(2) The elective share of the surviving spouse shall not include the value of the property held in a trust described in subparagraph (1), if both of the following are true:

(a) The decedent created the trust after the date of decedent’s marriage to the surviving spouse.

(b) Every transfer of property into the trust, except for tangible personal property, included a written statement which complied with this subparagraph division. The written statement shall be in boldface type of a minimum size of ten points, signed and dated by the surviving spouse with a valid notarial acknowledgment, and in substantially the following form:

By signing below, I acknowledge that I am giving up all rights to enjoyment of the property described above, regardless of whether or not I survive my spouse and regardless of any rights Iowa law otherwise gives to me with respect to such property. I am specifically waiving my elective share in the property described in this waiver.

This waiver shall apply regardless of any changes made to the trust in the future, including any change to the beneficiaries of the trust.

2. When a settlor of a revocable trust transfers real property to the trustee of the revocable trust and the settlor’s spouse signs a conveyance of the real property to such trustee which includes a general waiver of rights of dower, homestead, and distributive share, the spouse is only relinquishing the right to that real property and its value under [subsection 1](#), paragraph “a”, for the purpose of conveying marketable title to a subsequent purchaser from the trustee and is not relinquishing the right to the value of the real estate under [subsection 1](#), paragraph “d”, unless the spouse specifically states in writing an intent to relinquish the right to the value of the real estate under [subsection 1](#), paragraph “d”. The relinquishment of right under [subsection 1](#), paragraph “a” shall not prevent the surviving spouse from electing one-third in value of such real property under [subsection 1](#), paragraph “d”.

3. 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](#); [2015 Acts, ch 125, §4, 7](#)

Referred to in [§614.14](#), [§633.236](#), [§633.237](#), [§633.239](#), [§633.240](#), [§633.246](#)

2015 amendment applies to estates of decedents dying on or after July 1, 2015; 2015 Acts, ch 125, §7

Section amended