



Ohio Revised Code

Section 2106.01 Election by surviving spouse.

Effective: January 13, 2012

Legislation: Senate Bill 124 - 129th General Assembly

(A) After the initial appointment of an administrator or executor of the estate, the probate court shall issue a citation to the surviving spouse, if any is living at the time of the issuance of the citation, to elect whether to exercise the surviving spouse's rights under Chapter 2106. of the Revised Code, including, after the probate of a will, the right to elect to take under the will or under section 2105.06 of the Revised Code.

A surviving spouse may waive the service of the citation required under this division by filing in the probate court a written waiver of the citation. The waiver shall include an acknowledgment of receipt of the description of the general rights of the surviving spouse required by division (B) of section 2106.02 of the Revised Code.

(B) If the surviving spouse elects to take under section 2105.06 of the Revised Code and if the value of the property that the surviving spouse is entitled to receive is equal to or greater than the value of the decedent's interest in the mansion house as determined under section 2106.10 of the Revised Code, the surviving spouse also is entitled to make an election pursuant to division (A) of section 2106.10 of the Revised Code.

(C) If the surviving spouse elects to take under section 2105.06 of the Revised Code, the surviving spouse shall take not to exceed one-half of the net estate, unless two or more of the decedent's children or their lineal descendants survive, in which case the surviving spouse shall take not to exceed one-third of the net estate.

For purposes of this division, the net estate shall be determined before payment of federal estate tax, estate taxes under Chapter 5731. of the Revised Code, or any other tax that is subject to apportionment under section 2113.86 or 2113.861 of the Revised Code.

(D) Unless the will expressly provides that in case of an election under division (A) of this section there shall be no acceleration of remainder or other interests bequeathed or devised by the will, the



balance of the net estate shall be disposed of as though the surviving spouse had predeceased the testator. If there is a disposition by a will to an inter vivos trust that was created by the testator, if under the terms of the trust the surviving spouse is entitled to any interest in the trust or is granted any power or nomination with respect to the trust, and if the surviving spouse makes an election to take under section 2105.06 of the Revised Code, then, unless the trust instrument provides otherwise, the surviving spouse is considered for purposes of the trust to have predeceased the testator, and there shall be an acceleration of remainder or other interests in all property bequeathed or devised to the trust by the will, in all property held by the trustee at the time of the death of the decedent, and in all property that comes into the possession or under the control of the trustee by reason of the death of the decedent.

(E) The election of a surviving spouse to take under a will or under section 2105.06 of the Revised Code may be made at any time after the death of the decedent, but the surviving spouse shall not make the election later than five months from the date of the initial appointment of an administrator or executor of the estate. On a motion filed before the expiration of the five-month period, and for good cause shown, the court may allow further time for the making of the election. If no action is taken by the surviving spouse before the expiration of the five-month period, it is conclusively presumed that the surviving spouse elects to take under the will. The election shall be entered on the journal of the court.

When proceedings for advice or to contest the validity of a will are begun within the time allowed by this division for making the election, the election may be made within three months after the final disposition of the proceedings, if the will is not set aside.

(F) When a surviving spouse succeeds to the entire estate of the testator, having been named the sole devisee and legatee, it shall be presumed that the spouse elects to take under the will of the testator, unless the surviving spouse manifests a contrary intention.