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Estate Planning: The Difference between Year's Allowance and Elective Share

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In North Carolina, there are several laws in place intended to prevent you from effectively disinheriting your spouse. These laws include the **Year's Allowance** and the **Elective Share**. Both of these laws are under Chapter 30 (Surviving Spouses) of the North Carolina General Statutes. These laws allow the surviving spouse to get as much or a little more from his or her inheritance as they would have if the deceased spouse had died without a will or intestate. Why is this important? Because the deceased spouse's will could leave everything that doesn't pass automatically to the surviving spouse to his or her children, family, a charity, or anyone else besides the surviving spouse – a possibility that is common with second marriages where the spouse has children from a previous marriage or relationship that he or she wants to make sure benefit from the deceased person's estate.

The **Year's Allowance** allows the surviving spouse, within the first year of the deceased spouse's death, to claim as much as \$30,000 of the deceased spouse's estate (from what hasn't already passed automatically by law). This is intended to give the surviving spouse enough resources to manage his or her affairs during that first year after his or her spouse's death (the time period by which the affairs of the estate are being administrated). The statute contains a provision for minor children as well.

In comparison, the **Elective Share** allows for the surviving spouse, within six months after the estate is opened (letters have been issued) to claim a larger portion of the deceased spouse's estate. The couple's length of marriage determines how much of a percentage to which the surviving spouse is so entitled. If the couple were married for less than five years, 15%. If the couple were married for less than 10 years, 25%. If the couple were married for less than 15 years, 33%, and if the couple were married 15 years or more, then 50%.

Of course, with both of these provisions, there is a laundry list of qualifying and disqualifying stipulations. These statutes are in place to essentially circumvent a decedent's last will and testament to allow a surviving spouse to take more than perhaps what was intentionally left to him or her. Because there may be facts that change the surviving spouse's situation and circumstances, it is extremely important to

consult an estate planning attorney before pushing the will aside and deciding to take either one or both of these elections and allowances.

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