

---

# Do I Have Any Rights Against My Spouse's Estate When My Spouse Devises All Or A Portion Of Their Assets, Whether By Will Or Otherwise, To Someone Other Than Me At Their Death?

BLOG | MARCH 6, 2017

North Carolina law provides certain statutory protections to the surviving spouse of a decedent. Unless waived in a written agreement as provided by statute, a surviving spouse has the right to a Year's Allowance (currently \$30,000.00) from the decedent's estate as well as the right to claim an elective share against the decedent's estate. A Year's Allowance is paid from the property in the decedent's probate estate and takes precedence over creditor claims. The Year's Allowance must be filed within the one (1) year period following the decedent's death.

A claim for an elective share entitles the surviving spouse to receive a percentage of the decedent's total assets after adjustments for the decedent's debts. Importantly, the decedent's total assets include assets passing through probate as well as assets passing by beneficiary designation form, other non-probate transfers, and even by gift for a period prior to the date of death. The surviving spouse's percentage of total net assets is dependent on the number of years the couple was married, with the highest percentage being fifty percent (50%) of the total net assets for a marriage lasting fifteen (15) years or more. A claim for elective share must be brought within the six (6) month period beginning on the date a personal representative is appointed for the decedent's estate.

A surviving spouse may have other rights against the decedent's estate, including contribution for a mortgage encumbering property formerly held jointly with the deceased spouse, rights to certain retirement benefits, and rights under a premarital or other similar agreement. If any of these situations may apply to you, be aware that your ability to pursue such claims may require that you do so within a statutorily prescribed period of time.

## About the Author

**Stephen Brown** focuses his practice on business formation and structuring, wealth transfer planning, and litigation involving fiduciaries, trusts, estates and guardianships. If you have questions regarding whether or not to open a probate estate, please contact Stephen at 919-861-5508 or [sab@youngmoorelaw.com](mailto:sab@youngmoorelaw.com).

---

**CONTACT US**

Phone: 919-782-6860

Fax: 919-782-6753

**OFFICE**

Young Moore and Henderson, P.A.

3101 Glenwood Ave. Suite 200

Raleigh, N.C. 27612

**MAILING ADDRESS**

Young Moore and Henderson, P.A.

P.O. Box 31627

Raleigh, N.C. 27622-1627