

§2-213. Waiver of right to elect and of other rights

1. Waiver of election and statutory benefits. The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the surviving spouse.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Waiver not enforceable. A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

A. The surviving spouse did not execute the waiver voluntarily; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:

(1) Was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(2) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(3) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Unconscionability. An issue of unconscionability of a waiver is for decision by the court as a matter of law.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Waiver of "all rights." Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, homestead allowance, exempt property and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to the spouse from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 131st Legislature and is current through October 15, 2024. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.