

HOUSE No. 1562

The Commonwealth of Massachusetts

PRESENTED BY:

Eugene L. O'Flaherty

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act improving spousal elective share.

PETITION OF:

NAME:

Eugene L. O'Flaherty

DISTRICT/ADDRESS:

2nd Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1623 OF .]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT IMPROVING SPOUSAL ELECTIVE SHARE..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws, as appearing in the 2006 Official Edition, are hereby amended by
2 inserting after chapter 191B the following new chapter:-

3 **CHAPTER 191C.**

4 **[ELECTIVE SHARE OF SURVIVING HUSBAND OR WIFE]**

5 Section 1. **[Definitions.]**

6 As used in this chapter the following words shall, unless the context otherwise requires,
7 have the following meanings:-.

8 (1) “Decedent’s nonprobate transfers to others” means the types of transfers
9 specifically included in the elective estate under section five.

10 (2) “Fractional interest in property held in joint tenancy with the right of
11 survivorship,” whether the fractional interest is unilaterally severable or not,
12 means the fraction, the numerator of which is one and the denominator of which,

13 if the decedent was a joint tenant, is one plus the number of joint tenants who
14 survive the decedent and which, if the decedent was not a joint tenant, is the
15 number of joint tenants.

16 (3) “Marriage,” as it relates to a transfer by the decedent during marriage, means any
17 marriage of the decedent to the decedent’s surviving spouse.

18 (4) “Nonadverse party” means a person who does not have a substantial beneficial
19 interest in the trust or other property arrangement that would be adversely
20 affected by the exercise or nonexercise of the power that he [or she] possesses
21 respecting the trust or other property arrangement. A person having a general
22 power of appointment over property is deemed to have a beneficial interest in the
23 property.

24 (5) “Power” or “power of appointment” includes a power to designate the
25 beneficiary of a beneficiary designation.

26 (6) “Presently exercisable general power of appointment” means a power of
27 appointment under which, at the time in question, the decedent, whether or not he
28 [or she] then had the capacity to exercise the power, held a power to create a
29 present or future interest in himself [or herself], his [or her] creditors, his [or her]
30 estate, or creditors of his [or her] estate, and includes a power to revoke or invade
31 the principal of a trust or other property arrangement.

32 (7) “Probate estate” means property that would pass by intestate succession if the
33 decedent dies without a valid will.

34 (8) “Property” includes values subject to a beneficiary designation.

35 (9) “Right to income” includes a right to payments under a commercial or private
36 annuity, an annuity trust, a unitrust, or a similar arrangement.

37 (10) “Transfer,” as it relates to a transfer by or of the decedent, includes (A) an
38 exercise or release of a presently exercisable general power of appointment held

39 by the decedent, and (B) an exercise, release, or lapse of a general power of
40 appointment that the decedent, created in himself [or herself].

41 (11) “Transfers by a testamentary substitute” means those nonprobate transfers of the
42 type specifically included in the elective estate by the provisions of section five.

43 (12) “Surviving husband or wife.” A person who was married to the decedent at the
44 time of his or her death.

45 Section 2. [**Elective Share - Relinquishment of Election.**]

46 (a) The surviving husband or wife of a person who dies domiciled in Massachusetts
47 may elect, under the limitations and conditions stated in this chapter, to claim the value of such
48 portion of the elective estate of the deceased spouse as he or she is given under this chapter in lieu
49 of any provisions that may have been made in a will for him or for her and any provisions under
50 the intestacy laws for him or for her and any provisions that may have been made for him or for
51 her in any testamentary substitute included in the elective estate. The election provided by this
52 chapter is subject to the provisions of section thirty-six of chapter two hundred and nine. The
53 right, if any, of the surviving husband or wife of a person who dies domiciled outside this
54 commonwealth to take an elective share in property in this commonwealth is governed by the law
55 of the decedent’s domicile at death.

56 (b) Spouses are entitled to opt out of the provisions of this chapter by relinquishing
57 the election provided by this chapter. A spouse, by a writing subscribed by said spouse, may
58 relinquish the election granted by this chapter as to the entire elective estate or a portion thereof
59 or as to any particular property. A relinquishment is effective, in accordance with its terms,
60 whether executed before or after the marriage of the spouses; whether executed before, on or after
61 the effective date of this chapter; whether unilateral in form, executed only by the maker thereof,
62 or bilateral in form, executed by both spouses; whether absolute or conditional; whether executed

63 with or without consideration; and whether executed during the lifetime of the other spouse or
64 after his or her death.

65 (c) Language that relinquish, renounce, waive, release, abandon, or disclaim all
66 rights in the estate of the other spouse, or substantially equivalent language, is a relinquishment of
67 election against any property included in the elective estate under this chapter. Language that
68 relinquish, renounce, waive, release, abandon, or disclaim rights under a particular will or
69 testamentary substitute or an interest in particular property, or substantially equivalent language,
70 is a relinquishment only of the particular rights or property identified therein with reasonable
71 particularity.

72 (d) A relinquishment executed after the effective date of this chapter is sufficient if
73 in writing and subscribed by the maker thereof, acknowledged before a notary public in form and
74 content substantially as follows:

75 **This form gives up important legal rights. If not understood,**
76 **consult a lawyer.**

77 Relinquishment of Rights to Claim Share of Elective Estate Under G.L. c. 191 C.

- 78 1.) As a married person I will have certain rights under Massachusetts Laws
79 Chapter 191 C to elect to take a share of my spouse's property after his or
80 her death. I may claim this share even if my spouse does not want me to
81 have it. I have been given an explanation of these rights or an opportunity
82 to review my rights under Massachusetts law as fully as I desire. I have
83 the right to consult a lawyer regarding my rights under Massachusetts law.
- 84 2.) I have a right to know what property my spouse owns or has an interest in
85 before signing this form. Knowing of this right, I have [initial one]:

86 [] reviewed a list of such property which is attached to this form as
87 Exhibit A; or

88 [] intentionally decided to sign this form without full disclosure of
89 the property owned by my spouse, knowing I will be bound by my
90 signature even for property I know nothing about.

91 3.) I have read the foregoing description of my rights, and have been given a
92 full opportunity to seek whatever advice and counsel I desire, and I am
93 signing this form voluntarily as my free act and deed.

94 **I hereby relinquish, renounce, waive, release, abandon, disclaim, and give up**
95 **the following rights:**

96 [initial only those categories you intend to apply]

97 [] All rights in the estate of my spouse that I may otherwise
98 have under Mass. Gen. Laws Chapter 191 C.

99 [] Any rights I may have as to:

100 _____.

101 [here state the particular property, will, or testamentary substitute as to which
102 rights are being given up]

103 [] I release my rights in return for the following promises or
104 subject to the following conditions.

105 _____

106 [here insert any conditions or limitations you wish to impose]

107 Signed under seal as a legally binding document.

108

109 DATE: _____

110 Signature

111 **COMMONWEALTH OF MASSACHUSETTS**

112 _____, ss. (Date)

113 Then personally appeared the above-named
114 _____ and acknowledged the foregoing instrument to be
115 his/her free act and deed, before me.

116 _____

117 Notary Public

118 My Commission Exp:

119 _____

120 (d) Unless it provides to the contrary, an instrument of transfer to a third party
121 executed by both spouses, or executed by one spouse and consented to in writing by the other
122 spouse, is a relinquishment of the election under this chapter by each spouse against the other in
123 the property transferred.

124 (e) Unless it provides to the contrary, a valid written agreement that relinquishes,
125 renounces, waives, releases, abandons, or disclaims all rights in the property or estate of a present
126 or prospective spouse, or substantially equivalent language, or a complete property settlement
127 entered into after or in anticipation of separation or divorce is a relinquishment of the elective
128 share under this chapter by each spouse in the property of the other.

129 (f) If the validity of a relinquishment, renunciation, waiver, release, disclaimer, or
130 consent to transfer with respect to any property includible in the elective estate is or was governed
131 by federal law or by the law of another jurisdiction, then a valid relinquishment, renunciation,

132 waiver, release, disclaimer, or consent to transfer under such law shall be deemed an effective
133 relinquishment of the election provided by this chapter.

134 Section 3. **[Election Personal To Surviving Husband Or Wife.]**

135 (a) [Surviving husband or wife must be living at time of election.] The election
136 provided by this chapter is personal to the surviving husband or wife, may not be reached by
137 creditors or sold, assigned, or transferred in any manner, other than a relinquishment as provided
138 in section two of this chapter, and may only be made during the lifetime of the surviving husband
139 or wife. In the case of a surviving husband or wife under conservatorship or guardianship, the
140 election may be made by the duly appointed conservator or guardian of the surviving husband or
141 wife only with the approval of the probate court upon a substituted judgment standard. No
142 surviving husband or wife or the conservator, guardian, or agent under a durable power of
143 attorney of said surviving husband or wife shall be compelled to make an election under this
144 chapter nor penalized, disadvantaged, or discriminated against by virtue of the relinquishment of
145 or failure to make an election under this chapter. Relinquishment of election or failure to make
146 an election shall not affect the eligibility of the surviving husband or wife for benefits or
147 assistance under any governmental program.

148 (b) [Incapacitated Surviving Spouse.] If the election is exercised on behalf of a surviving
149 spouse who is an incapacitated person, that portion of the elective share amounts due under
150 section seven (b) must be placed in a custodial trust for the benefit of the surviving husband or
151 wife under the provisions of chapter two hundred and three B, except as modified below. For the
152 purposes of this subsection, an election on behalf of a surviving spouse by an authorized agent
153 under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an
154 incapacitated person. For purposes of the custodial trust established by this subsection, (i) the
155 electing guardian, conservator, or agent is the custodial trustee, (ii) the surviving spouse is the

156 beneficiary, and (iii) the custodial trust is deemed to have been created by the decedent spouse by
157 written transfer that takes effect at the decedent spouse's death and that directs the custodial
158 trustee to administer the custodial trust as for an incapacitated beneficiary.

159 (c) [Custodial Trust.] For the purposes of subsection (b) of this section, the chapter
160 two hundred and three B shall be applied as if section six (b) thereof were repealed and sections
161 two (e), nine (b), and seventeen (a) were amended to read as follows:

162 (1) Neither an incapacitated beneficiary nor anyone acting on behalf of an
163 incapacitated beneficiary has a power to terminate the custodial trust; but if the beneficiary
164 regains capacity, the beneficiary then acquires the power to terminate the custodial trust by
165 delivering to the custodial trustee a writing signed by the beneficiary declaring the termination.
166 If not previously terminated, the custodial trust terminates on the death of the beneficiary.

167 (2) If the beneficiary is incapacitated, the custodial trustee shall expend so much or
168 all of the custodial trust property as the custodial trustee considers advisable for the use and
169 benefit of the beneficiary and individuals who were supported by the beneficiary when the
170 beneficiary became incapacitated, or who are legally entitled to support by the beneficiary.
171 Expenditures may be made in the manner, when and to the extent that the custodial trustee
172 determines suitable and proper, without court order but with regard to other support, income, and
173 property of the beneficiary and benefits of medical or other forms of assistance from any state or
174 federal government or governmental agency for which the beneficiary must qualify on the basis
175 of need.

176 (3) Upon the beneficiary's death, the custodial trustee shall transfer the unexpended
177 custodial trust property in the following order: (i) to or as directed by the person who would have
178 taken under the disposition originally made by the beneficiary's predeceased spouse against
179 whom the elective share was taken; or (ii) under the residuary clause, if any, of the will of the

180 beneficiary's predeceased spouse against whom the elective share was taken, as if that
181 predeceased spouse died immediately after the beneficiary; or (iii) to that predeceased spouse's
182 heirs.

183 Section 4. [**Amount of Elective Share.**]

184 (a) Except as otherwise provided in paragraphs (c), (d) and (e) of this section, if the
185 deceased left issue, the surviving husband or wife shall take absolutely an amount equal to the
186 value of one-third of so much of the elective estate as does not exceed one million dollars, and
187 shall receive in addition to that amount only the income during his or her life on an amount equal
188 to the value of one-third of the excess of the elective estate above one million dollars.

189 (b) Except as otherwise provided in paragraphs (c), (d) and (e) of this section, if the
190 deceased left no issue, the surviving husband or wife shall take absolutely an amount equal to the
191 greater of fifty thousand dollars or one-half of the value of so much of the elective estate as does
192 not exceed one million dollars, and shall receive in addition to that amount only the income
193 during his or her life on an amount equal to one-third of the excess of the elective estate above
194 one million dollars.

195 (c) Except for an election under paragraph (e) of this section, if the deceased person and
196 the surviving husband or wife were married for less than fifteen years, then the surviving husband
197 or wife shall take the following percentage of the elective share amount otherwise provided under
198 (a) or (b) of this section.

199 (1) If the decedent and the spouse were married to each other for one year or
200 less, then sixteen percent of the elective share amount;

201 (2) for each additional year of marriage after the first, an additional six
202 percent of the elective share amount.

203 (3) For purposes of this section, the length of time the decedent and the
204 surviving spouse were married to each other shall be the sum of the lengths of all of their
205 marriages to each other.

206 (d) Except for an election under paragraph (e) of this section, an election under this
207 chapter shall be further limited to no more than the amount necessary to bring the value of the
208 property of the surviving husband or wife, after said election, to one-half the value of the
209 combined property of the elective estate of the deceased spouse and the elective estate of the
210 surviving husband or wife valued as if he or she had died contemporaneously with the deceased
211 spouse.

212 (e) If at the time of death of the deceased spouse, divorce proceedings were pending
213 and the parties had executed a written property settlement or the court had entered judgment
214 dividing their property which had not yet become final, the surviving husband or wife may elect
215 to take thereunder, which shall become the elective share for purposes of this chapter.

216 (f) Except for an election under paragraph (e) of this section, the surviving
217 husband's or wife's homestead allowance, exempt property, and family allowance, if any, are not
218 charged against but are in addition to the elective share.

219 Section 5. **[Property included in and excluded from the Elective Estate.]**

220 For purposes of this chapter, the elective estate includes:

221 (a) The decedent's probate estate, reduced by funeral and administration expenses,
222 homestead allowance, family allowances, exempt property, and enforceable claims; and

223 (b) The decedent's transfers by testamentary substitute, consisting of the decedent's
224 nonprobate transfers to others of any of the following types, in the amount provided respectively
225 for each type of transfer.

226 (1) Property owned or owned in substance by the decedent immediately
227 before death that passed outside probate at the decedent's death. Property included under
228 this category includes:

229 (i) Property over which the decedent alone, immediately before death, held
230 a presently exercisable general power of appointment. The amount included is the value
231 of the property subject to the power, to the extent the property passed at the decedent's
232 death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any
233 person other than the decedent's estate or surviving husband or wife.

234 (ii) The decedent's fractional interest in property held by the decedent in
235 joint tenancy with the right of survivorship. The amount included is the value of the
236 decedent's fractional interest, to the extent the fractional interest passed by right of
237 survivorship at the decedent's death to a surviving joint tenant other than the decedent's
238 surviving husband or wife.

239 (iii) The decedent's ownership interest in property or accounts held in POD,
240 TOD, or co-ownership registration with the right of survivorship. The amount included
241 is the value of the decedent's ownership interest, to the extent the decedent's ownership
242 interest passed at the decedent's death to or for the benefit of any person other than the
243 decedent's estate or surviving husband or wife.

244 (2) Property transferred in any of the following forms by the decedent during
245 marriage:

246 (i) Any irrevocable transfer in which the decedent retained the right to the
247 possession or enjoyment of, or to the income from, the property if and to the extent the
248 decedent's right terminated at or continued beyond the decedent's death. The amount
249 included is the value of the fraction of the property to which the decedent's right related,

250 to the extent the fraction of the property passed outside probate to or for the benefit of
251 any person other than the decedent's estate or surviving husband or wife.

252 (ii) Any transfer in which the decedent created a power over income or
253 property, exercisable by the decedent alone or in conjunction with any other person, or
254 exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of the
255 decedent, the decedent's estate, or creditors of the decedent's estate. The amount
256 included with respect to a power over property is the value of the property subject to the
257 power, and the amount included with respect to a power over income is the value of the
258 property that produces or produced the income, to the extent the power in either case was
259 exercisable at the decedent's death to or for the benefit of any person other than the
260 decedent's surviving spouse or to the extent the property passed at the decedent's death,
261 by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person
262 other than the decedent's estate or surviving spouse. If the power is a power over both
263 income and property and the preceding sentence produces different amounts, the amount
264 included is the greater amount.

265 (3) Property that passed during marriage and during the one year period next
266 preceding the decedent's death as a result of a transfer by the decedent if the transfer
267 occurred after the filing of divorce or separation proceedings and in violation of a
268 restraining order, injunction, or other order of the probate court restricting the transfer;
269 and

270 (c) [Testamentary substitutes passing to surviving husband or wife] Excluding property
271 passing to the surviving husband or wife under the federal social security system, the value of the
272 elective estate includes the value of the decedent's transfers by testamentary substitute, consisting

273 of nonprobate transfers to the decedent's surviving husband or wife, of the following types in the
274 amount provided respectively for each type of transfer:

275 (1) the decedent's fractional interest in property held as a joint tenant with the right
276 of survivorship, to the extent that the decedent's fractional interest passed to the
277 surviving husband or wife as surviving joint tenant;

278 (2) the decedent's ownership interest in property or accounts held in co-ownership
279 registration with the right of survivorship, to the extent the decedent's ownership interest
280 passed to the surviving husband or wife as surviving co-owner; and

281 (3) all other property that would have been included in the elective estate under
282 paragraphs (b)(1) or (b)(2) or (b)(3) of this section had it passed to or for the benefit of a
283 person other than the decedent's spouse, the decedent, or the decedent's creditors, estate,
284 or estate creditors.

285 (d) The value of property included in the elective estate is reduced in each category by
286 enforceable claims against the included property

287 (e) In case of overlapping application to the same property of the paragraphs or
288 subparagraphs of this section including property in the elective estate, the property is included in
289 the elective estate under the provision yielding the greatest value, and under only one overlapping
290 provision if they all yield the same value.

291 (f) [Property excluded from Elective Estate.]

292 Notwithstanding any other provision of this chapter, the following are excluded from the
293 elective estate:

294 (1) The value of any property is excluded from the decedent's transfers by
295 testamentary substitute to the extent the decedent received adequate and full
296 consideration in money or money's worth for a transfer of the property.

297 (2) The value of any property relinquished under section two of this chapter
298 is excluded from the elective estate.

299 (3) the value of proceeds of life insurance not payable to the decedent's
300 estate is excluded from the elective estate.

301 (4) The value of interests in community property arising under the
302 community property laws of other states is excluded from the elective estate.

303 (5) The value of a principal residence transferred to or for the benefit of a
304 decedent spouse's issue is excluded from the elective estate.

305 (6) The value of any property held in trust for the benefit of a disabled child
306 or grandchild of the decedent spouse is excluded from the elective estate.

307 (7) The value of any property transferred by testamentary substitute as
308 defined in section five (b)(one) and (two) prior to the effective date of this chapter is
309 excluded from the elective estate.

310 Section 6. **[Proceedings for Elective Share; Time Limit].**

311 (a) An election under this chapter shall be made by filing in the probate court a
312 petition for the elective share within the earlier of nine months after the date of the decedent's
313 death or six months after the surviving husband or wife receives notice of proceedings for probate
314 of the decedent's will or administration of the decedent's estate. The surviving husband or wife
315 may dismiss or withdraw his or her petition for an elective share, with prejudice, at any time

316 before entry of a final determination by the court and the expiration of the time for appeal or, if an
317 appeal is taken, at any time during the appeal or within ten days after rescript.

318 (b) If, after a will of the deceased is offered for probate, legal proceedings have been
319 instituted wherein its validity or effect is drawn in question, the probate court may within six
320 months, on petition and after such notice as it orders, extend the time for filing an election under
321 this chapter for a reasonable time not to exceed six months from the termination of such
322 proceedings.

323 (c) After the decedent's death and either before or after the filing of a petition for
324 election under this chapter, a surviving husband or wife has the right to receive all material
325 information regarding property that is or may be includible in the elective estate, within a
326 reasonable time after his or her request for such information, from the personal representative of
327 the decedent and from any person in possession or control of such property and from any person
328 with an interest in such property, and if necessary, the surviving husband or wife may apply to the
329 probate court for appropriate assistance in enforcing such right to information.

330 (d) Notice of the filing of the petition shall be given to persons interested in the
331 estate and to persons whose interests may be adversely affected by the taking of the elective
332 share. The proceeding for determination of the elective share may be maintained against fewer
333 than all persons against whom relief could be sought, but no person is subject to contribution in
334 any greater amount than would have been the case if relief had been secured against all such
335 persons.

336 (e) Upon application by the surviving husband or wife, the probate court may allow
337 attachments, trustee process, specific orders for equitable relief, and such other writs and orders
338 as it deems meet and just to preserve property that is or may be includible in the elective estate.

339 (f) Upon application to the probate court after the death of the decedent by the
340 personal representative or a surviving husband or wife or other person interested in the elective
341 estate, the court may order that all or part of the property that is or may be includible in the
342 elective estate be paid pendent lite to persons entitled thereto in amounts and subject to conditions
343 consistent with this chapter.

344 (g) After notice and hearing, the court shall determine the amount of the elective
345 share and shall order its payment as provided in section seven of this chapter. If it appears that a
346 fund or property included in the elective estate has not come into possession of the personal
347 representative, or has been distributed by the personal representative, the court shall nevertheless
348 fix the liability of any person who has any interest in the fund or property or who has possession
349 thereof, whether as trustee or otherwise.

350 (h) The orders or judgments of the probate court shall be enforceable in the same
351 manner as other orders or judgments for the payment of money or for specific relief as to
352 particular assets. Interest shall accrue from the date of judgment at twelve percent per annum.

353 (i) In addition to the powers conferred in section ten of chapter two hundred and
354 eleven B, the chief justice for the probate and family court department may, from time to time,
355 provide procedural forms and make general rules and issue standing orders in reference to
356 practice and procedure as relates to the elective share of the surviving husband or wife, subject to
357 the approval of the supreme judicial court.

358 **Section 7. [Liability for Satisfaction of Elective Share.]**

359 (a) In a petition for the elective share under this chapter, there shall first be applied
360 to satisfy the elective share amount and to reduce or eliminate any contributions due from others,
361 property that passes or has passed or but for the election would have passed to the surviving
362 husband or wife as a result of decedent's death.

363 (b) Except as otherwise provided in the will or an instrument governing a
364 testamentary substitute, contribution to the remaining elective share amount to which the
365 surviving spouse is entitled shall be made pro-rata in proportion to the value of their interests in
366 the elective estate by the original recipients, beneficiaries, and distributees under the decedent's
367 will, by intestacy, and by testamentary substitute, which contribution may be made in cash or in
368 the specific property received from the decedent by the person required to make such contribution
369 or partly in cash and partly in such property as such person in his or her discretion shall
370 determine.

371 (c) No original recipient who shall conform to the standard of a Massachusetts
372 executor or administrator with respect to the care and management of assets included in the
373 elective estate or who shall hold all such assets in the form in which such original recipient
374 received them, shall be liable to the surviving spouse in an amount greater than the value of the
375 elective estate assets received by such original recipient, determined as of the date of distribution
376 or payment to the surviving husband or wife in satisfaction of such liability including interest, if
377 any, under section six (g) of this chapter. No beneficiary shall be liable to the surviving spouse in
378 an amount greater than the value of such beneficiary's share of the elective estate at the date of
379 distribution or payment to the surviving husband or wife in satisfaction of such liability including
380 interest, if any, under section six (g) of this chapter.

381 (d) [Protection of Subsequent Transferees]

382 A person, other than an original recipient, a beneficiary, or a payor, who receives
383 an asset included in the elective estate, whether for value or as a gift, shall not be liable under this
384 chapter for the value of the asset or any portion thereof, regardless of whether at the time such
385 asset was received such person had notice of the surviving spouse's intention to file a petition for

386 the elective share or notice that a petition for the elective share had been filed, unless the transfer
387 to such person was a fraudulent transfer as to the surviving husband or wife.

388 Section 8. **[Protection of Payors and Other Third Parties.]**

389 (a) [Nonexistence of Liens or Encumbrances.]

390 The elective share of a surviving husband or wife under this chapter shall not be
391 construed as imposing a lien or other encumbrance on any real or personal property, tangible or
392 intangible, includible in the elective estate.

393 (b) A payor or other third party is not liable for having made a payment or
394 transferred an item of property or other benefit to a beneficiary designated in a governing
395 instrument, or for having taken any other action in good faith reliance on the validity of a
396 governing instrument, upon request and satisfactory proof of the decedent's death, before the
397 payor or other third party received written notice from the surviving spouse or the surviving
398 spouse's representative that a petition for the elective share has been filed. A payor or other third
399 party is liable for payments made or other actions taken after the payor or other third party
400 received written notice that a petition for the elective share has been filed.

401 (c) A written notice that a petition for the elective share has been filed must be
402 mailed to the payor's or other third party's main office or home by registered or certified mail,
403 return receipt requested, or served upon the payor or other third party in the same manner as a
404 summons in a civil action. Upon receipt of written notice that a petition for the elective share has
405 been filed, a payor or other third party may pay any amount owed to or with the court having
406 jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have
407 been commenced, to or with the probate court having jurisdiction of probate proceedings relating
408 to decedents' estates located in the county of the decedent's last known address. Subject to rule
409 or regulation of the probate court with respect to acceptable and unacceptable property, or on

410 motion with the approval of the probate court, and subject further to such terms and conditions as
411 the probate court may impose, a payor or other third party may transfer or deposit any item of
412 property held by it to or with the court having jurisdiction of the probate proceedings relating to
413 the decedent's death, or if no proceedings have been commenced, to or with the probate court
414 having jurisdiction of probate proceedings relating to decedents' estates in the county of the
415 decedent's last known address. The court shall hold the funds or item of property and, upon its
416 determination of the elective share under this chapter, shall order disbursement in accordance
417 with the determination. If the petition for an elective share is withdrawn or dismissed, the court
418 shall order disbursement to the designated beneficiary. Payments or transfers to the court or
419 deposits made into court discharge the payor or other third party from all claims for amounts so
420 paid or the value of property so transferred or deposited.

421 The right of election provided under this chapter shall not create an interest, in any real or
422 personal property of a spouse, nor create any lien or encumbrance on any real or personal
423 property of a spouse, nor impair or impede or restrict in any way the right of a spouse to the
424 ownership and free transferability of his or her property.

425 Section 9. [**Real Estate.**]

426 An election under this chapter shall not divest, encumber or have any operation or effect on any
427 interest in real or personal property held by any third party.

428 Section 10. This act shall be effective for estates of persons dying on or after January one, two
429 thousand thirteen.