

RIGHTS OF SURVIVING SPOUSE

FILINGS

1. SPF 7.1: Application for Family Allowance
2. SPF 7.2: Application for Apportionment of Family Allowance
3. SPF 8.0: Citation to Surviving Spouse to Exercise Elective Rights
4. SPF 8.1: Election of Surviving Spouse to Take Under Will
5. SPF 8.2: Election of Surviving Spouse to Take Against Will
6. SPF 8.3: Summary of General Rights of Surviving Spouse
7. SPF 8.4: Certificate of Service and Notice of Citation to Surviving Spouse to Exercise Elective Rights
8. SPF 8.5: Return for Certificate of Service of Citation to Surviving Spouse to Exercise Elective Rights
9. SPF 8.6: Waiver of Service to Surviving Spouse of the Citation to Elect

SERVICE

1. Citation to surviving spouse served after the appointment of fiduciary, both testate and intestate, by the court. [R.C. 2106.01(A)]; [Civ.R. 73]
2. Service of Citation may be waived. [R.C. 2106.01(A)]

TIME FRAMES [R.C. 2106.01(E)]

1. The surviving spouse must exercise all rights within five months of the appointment of fiduciary, unless otherwise provided by statute. [R.C. 2106.25]
2. The time period may be extended upon motion and good cause shown.

ELECTIONS

1. To take under the will (or taking no action). (SPF 8.1)
2. To take against the will. (SPF 8.2) [R.C. 2106.06]



Definition of net estate or acceleration of remainder interest under R.C. 2106.01 (D). Further, if spouse is under a legal disability, [R.C. 2131.02] the court must make an election after appointing some suitable person to ascertain the value of the provision made for the surviving spouse by the testator as against the value of the rights of the surviving spouse in the estate of the testator. [R.C. 2106.08]

PROCEDURE (to take under R.C. 2105.06) [R.C. 2106.06]

1. Hearing scheduled, upon request.
2. Election must be made in person before a judge or magistrate.
3. Judicial officer shall explain the will, the rights under the will, and the rights of the spouse in the event of refusal to take under the will.

RIGHTS [under R.C. 2106.06]

1. To receive one-half of the net estate or one-third of net estate, if two or more of the decedent's children or their lineal descendants survive. [R.C. 2106.01(C)]
2. To receive the mansion house or remain rent free for one year. If the property is sold before the year runs, then the spouse shall be paid fair rental value. [R.C. 2106.10 and 2106.15]
 - a. Election must be made at or before the filing of the final account. [R.C. 2106.10(B)]
 - b. The mansion house includes decedent's title to the land and may include household goods and certain farmland. [R.C. 2106.10(F)]
3. To receive an allowance for support of up to \$40,000. [R.C. 2106.13(A)]
 - a. Allowance may be apportioned between surviving spouse and minor children not born of the decedent or between decedents' minor children if no surviving spouse. [R.C. 2106.13(A)] SPF 7.2 is filed within 5 months of appointment. [R.C. 2106.13(D)]

- b. If surviving spouse selects more than one automobile pursuant to R.C. 2106.18, the allowance is reduced by the value of the automobile having the lower value. [R.C. 2106.13 and R.C. 2106.18]
4. To purchase property at appraised values [R.C. 2106.16]
 - a. May purchase the decedent's interest in the mansion house and land where house is located, adjacent farmland, and household goods. [R.C. 2106.16(A)]
 - i. A complaint ("petition") must be filed to purchase real property, and a motion ("application") must be filed to purchase personal property. [R.C. 2106.16(B)]
 - b. May purchase the decedent's interest in other probate property that does not exceed one-third of the gross value of the appraised estate. [R.C. 2106.16(B)]
 5. To receive automobiles, unless specifically bequeathed otherwise in the will [R.C. 2106.18]
 - a. That shall not exceed \$65,000
 - b. "Automobile" includes a motorcycle and a truck, if the truck is used as a method of conveyance by the deceased spouse or family.
 6. To receive one watercraft and one outboard motor. [R.C. 2106.19]
 7. To be reimbursed from estate for payment of decedent's funeral and burial expenses, subject to creditor's rights. [R.C. 2106.20]
 8. To set aside Antenuptial or Separation Agreement [R.C. 2106.22]
 - a. Action to set aside or to declare validity of the agreement must be filed within 4 months of the fiduciary's appointment.