

IC 29-1-4

Chapter 4. Surviving Spouse and Family Allowances

IC 29-1-4-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 1 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.

(2) The amendments made to section 1 of this chapter by P.L.252-2001 apply to the estate of an individual who dies after June 30, 2001.

As added by P.L.220-2011, SEC.468.

IC 29-1-4-1

Surviving spouse and family allowances

Sec. 1. (a) The surviving spouse of a decedent who was domiciled in Indiana at the decedent's death is entitled from the estate to an allowance of twenty-five thousand dollars (\$25,000). If there is no surviving spouse, the decedent's children who are under eighteen (18) years of age at the time of the decedent's death are entitled to the same allowance to be divided equally among them.

(b) The allowance under subsection (a) may be claimed against:

- (1) the personal property of the decedent's estate;
- (2) the real property that is part of the decedent's estate; or
- (3) a combination of personal property under subdivision (1) and real property under subdivision (2).

(c) Not later than ninety (90) days after the order commencing the estate administration, an individual entitled to the allowance may file with the court an election specifying whether the allowance is being claimed under subsection (b) against the personal property of the estate or the real property that is part of the estate, or a combination of both. An interested party may file an objection to the manner in which the allowance is being claimed not later than thirty (30) days after the date the election is filed with the court. The court shall rule on the objection after notice and a hearing. If an election is not filed within ninety (90) days after the order commencing the estate administration, the allowance must be satisfied according to the following order of preference:

- (1) From the intangible personal property of the estate.
- (2) From the tangible personal property of the estate.
- (3) From the real property that is part of the estate.

(d) If the personal property of the estate is less than twenty-five thousand dollars (\$25,000) in value, the spouse or decedent's children who are under eighteen (18) years of age at the time of the decedent's death, as the case may be, are entitled to any real estate of the estate to the extent necessary to make up the difference between the value of the personal property and twenty-five thousand dollars (\$25,000). The amount of that difference is a lien on the real estate.

However, no real estate may be sold to satisfy the survivor's allowance unless the sale is approved:

- (1) in an agreement signed by all interested persons; or
- (2) by court order following notice to all interested persons.

(e) An allowance under this section is not chargeable against the distributive shares of either the surviving spouse or the children.

(f) For purposes of this section, the value of the real property that is part of a decedent's estate must be determined as of the date of the decedent's death.

(Formerly: Acts 1953, c.112, s.401; Acts 1973, P.L.287, SEC.2; Acts 1975, P.L.288, SEC.3.) As amended by Acts 1978, P.L.132, SEC.1; P.L.118-1997, SEC.11; P.L.42-1998, SEC.1; P.L.252-2001, SEC.11; P.L.143-2009, SEC.9.

IC 29-1-4-2

Repealed

(Repealed by Acts 1975, P.L.288, SEC.51.)

IC 29-1-4-3

Repealed

(Repealed by Acts 1975, P.L.288, SEC.51.)