

## Committee on Judiciary

### **CS/CS/SB 724 — Estates**

by Banking and Insurance Committee; Judiciary Committee; and Senator Passidomo

This bill modifies several sections of the Probate Code relating to the “elective share”—that is, the 30 percent portion of a decedent’s estate that a surviving spouse may elect to take regardless of what is provided to him or her in the decedent’s testamentary plan.

The bill expressly includes the decedent’s protected homestead in the elective estate, which is the part of the decedent’s property upon which the elective share is calculated. In contrast, current law does not include homestead property in the elective estate. For the purpose of the calculation of the elective estate, homestead is valued differently depending on the interest that the surviving spouse has in the homestead. Specifically, the homestead is valued at:

- Its fair market value as of the decedent’s death if the surviving spouse receives a full, outright (“fee simple”) interest; or
- One-half of its fair market value on the decedent’s date of death if the surviving spouse elects to take a life estate in the homestead or if the surviving spouse elects to take a one-half interest in the homestead.

However, if the surviving spouse waived his or her homestead rights but nevertheless receives an interest in the homestead, the interest is valued as if it was in non-homestead property.

The bill expands the prospect of recovering attorney fees and costs in elective share proceedings. Under current law, a court may order only a surviving spouse to pay attorney fees and costs and only if he or she makes a bad-faith election. Under the bill, the court may award fees and costs to any person in an elective share proceeding in which there is a dispute over the:

- Entitlement to or the amount of the elective share;
- Property interests included in the elective estate or its value; or
- The satisfaction of the elective share.

If fees and costs are awarded, they may be paid from the estate, the elective estate, or other property of a party.

Current law permits the elective share to be satisfied by placing it in an elective share trust for the benefit of the surviving spouse. However, by law, this trust must give the surviving spouse the power to force the trustee to make the trust property productive of income. The bill grants this authority to the surviving spouse by operation of law, thus “saving” those trusts that do not expressly grant the surviving spouse this authority but that are otherwise legally sufficient.

If approved by the Governor, these provisions take effect July 1, 2017.

*Vote: Senate 37-0; House 117-0*