

CHAPTER 30.1-07

EXEMPT PROPERTY AND ALLOWANCES

30.1-07-00.1. (2-401) Applicable law. This chapter applies to the estate of a decedent who dies domiciled in this state. The rights to homestead allowance, exempt property, and family allowance for a decedent who dies not domiciled in this state are governed by the law of the decedent's domicile at death.

30.1-07-01. (2-403) Exempt property. In addition to the homestead defined in section 47-18-01, the decedent's surviving spouse is entitled from the estate to a value, not exceeding fifteen thousand dollars in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's minor children, whom the decedent was obligated to support and children who were in fact being supported by the decedent, are entitled jointly to the same value. If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt property, is less than fifteen thousand dollars, or if there is not fifteen thousand dollars worth of exempt property in the estate, the spouse or such children are entitled to other assets of the estate, if any, to the extent necessary to make up the fifteen thousand dollar value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of the homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by way of elective share.

30.1-07-02. (2-404) Family allowance.

1. In addition to the right to homestead allowance and exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or the child's guardian or other person having the child's care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims except the homestead allowance.
2. The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent, unless otherwise provided, by intestate succession or by way of elective share. The death of any person entitled to family allowance terminates the right to allowances not yet paid.

30.1-07-03. (2-405) Source, determination, and documentation.

1. If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, guardians of minor children, or children who are adults may select property of the estate as exempt property. The personal representative may make those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time, or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property. The personal representative may determine the family allowance in a lump sum not

exceeding twenty-seven thousand dollars or periodic installments not exceeding two thousand two hundred fifty dollars per month for one year and may disburse funds of the estate in payment of the family allowance. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.

2. If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under subsection 2 of section 30.1-05-06.