

59-6a213. Waiver of right of election and other rights by surviving spouse; requirements; procedures. (a) The right of election of a surviving spouse and the rights of the surviving spouse to the homestead, the homestead allowance or the family allowance, or all of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, consent to any instrument, or waiver signed by the surviving spouse.

- (b) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:
 - (1) The surviving spouse did not execute the waiver voluntarily; or
 - (2) the waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:
 - (A) Was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;
 - (B) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and
 - (C) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.
 - (c) An issue of unconscionability of a waiver is for decision by the court as a matter of law.
 - (d) Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share benefits that would otherwise pass to such spouse from the other by intestate succession or by virtue of any will executed before the waiver or property settlement. For documents executed on and after July 1, 2002, to waive the homestead, the homestead allowance or the family allowance, or all of them, the language of the document must clearly provide that the homestead, the homestead allowance or the family allowance, or all of them, were understandably and knowledgeably waived by each spouse, if applicable.

History: L. 1994, ch. 132, § 13; L. 2002, ch. 135, § 3; July 1.