

Md.'s Augmented Estate Law and estate planning and marital agreements



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Maryland's recently enacted Augmented Estate Law introduces new protections for dissatisfied spouses taking under an elective share. It also makes it difficult to exclude certain assets from passing through probate.

These changes require estate and family law attorneys to carefully counsel their clients as to the importance of having a valid antenuptial, postnuptial or separation agreement, as well as the design of their estate planning.

Maryland law historically has been designed to prevent a spouse from disinheriting their significant other. Under the previous code, unless the parties entered into a valid waiver, a dissatisfied spouse under a will was entitled to take an elective share of the probate estate.

The elective share was equal to one-third of probated assets or one-half of probated assets if the decedent did not have surviving qualifying descendants.

Nonetheless, creative minds were able to avoid probate, thus keeping assets out of the reach of a spouse, by moving them into vehicles that did not pass probate — such as to retirement plans, transfer or payable on death accounts, joint accounts, trusts and property which passed via life estate.

Parties with blended families or those on a second or subsequent marriage often requested prenuptial and postnuptial agreements that provided for waivers of estate rights to their current spouse. These efforts typically resulted in decreasing the overall probated estate from which a dissatisfied spouse could take an elective share, thereby effectively disinheriting them.

In October 2020, Maryland's new Augmented Estate Law, codified at §3-404 of the Estates and Trusts Article, went into effect.

The Augmented Estate Law increases a surviving spouse's rights as a beneficiary, expands the assets available to the surviving spouse from which to take, and increases the portion for a surviving spouse from one-third to one-half if there are no other qualifying descendants.

Now, the augmented value of the decedent's estate is calculated by totaling the value of decedent's probated estate, decedent's revocable trusts, all property held by decedent immediately before death, decedent's qualifying joint interests, and decedent's qualifying lifetime transfers.

The overall value is then reduced by certain expenses and claims, trusts, joint interests, lifetime transfers and

property, irrevocable transfers, life estates and spousal benefits.

Clearly, the new Augmented Estate Law packs quite a punch, although it is tempered a bit by Md. Est. & Trusts Code §3-404, which provides that a court may modify the calculation of an augmented estate upon a showing of clear and convincing evidence on a number of qualifying factors.

Given the overall strength of the Augmented Estate Law, practitioners would be wise to counsel clients who seek to limit what their spouse may take under their estate, as to the importance of an antenuptial or postnuptial agreement and strong estate plan.

By providing for adequate spousal benefits under an estate plan or having an agreed upon waiver of rights of election, including as to an augmented estate, in a prenuptial or postnuptial agreement clients can reduce the risk of their spouse taking under an augmented value of the estate.

This may be particularly important to a client who is considering or currently in divorce proceedings. Removing assets from the augmented value of the estate also removes the possibility of the soon-to-be ex receiving perhaps more than was bargained for.

Now is the time for both you and your clients to review their estate plans and any signed marital agreements to determine whether they need to be restructured to protect assets and beneficiaries.

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