

## **Elective Share**

### **Pyle & Dellinger, PL**

The Florida Constitution and Florida statutes offer protection for spouses so that one cannot be left penniless if his or her spouse dies and tries to leave the estate to somebody else. The Elective Share Law is a Florida statute that provides that the surviving spouse receives thirty percent of the decedent's estate of the surviving spouse "elects" to take that instead of what is left for the spouse by will. Thus, if a deceased spouse attempts to disinherit the surviving spouse, the surviving spouse can elect to take the 30 percent instead.

a trust can reduce the percent of the estate that is subject to the elective share.

The Florida Legislature has just revised this law dramatically. Whereas the law used to affect only assets subject to probate, now the property included in the elective estate (that is the property subject to the elective share) has been expanded to include property that is not subject to probate. Probate is the court supervised administration of an estate. Probate assets include property that is held in the decedent's name alone. The probate estate does not include property held in a revocable trust, property held in a P.O. D. or T.O.D. account, jointly owned property, property that has a designated beneficiary and other types of ownership where the property passes automatically upon death. Up until the statute changed, a spouse could avoid the ramifications of this law by holding the property in a living trust or creating one of the types of accounts mentioned above.

The elective share is equally applicable regardless of whether the surviving spouse is the husband or wife. A competent spouse can waive his or her right to elective share by signing a valid waiver, prenuptial agreement or post nuptial agreement. The new elective share statute also permits a person to create an elective share trust or a special needs trust, which places money aside in a trust for the other spouse's use; the amount placed in such