

59-6a209. Sources from which elective share payable. (a) In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others:

(1) Amounts included in the augmented estate under K.S.A. 59-6a204 which pass or have passed to the surviving spouse by testate or intestate succession and amounts included in the augmented estate under K.S.A. 59-6a206;

(2) amounts included in the augmented estate which would have passed to the spouse but were disclaimed and which will pass to issue of the surviving spouse, as defined in K.S.A. 59-615, and amendments thereto, who are not the issue of the decedent;

(3) amounts included in the augmented estate under K.S.A. 59-6a207 up to the applicable percentage thereof. For the purposes of this subsection, the "applicable percentage" is twice the elective-share percentage set forth in the schedule in subsection (a) of K.S.A. 59-6a202 as appropriate to the length of time the spouse and the decedent were married to each other; and

(5) [(4)] the value of any real estate recovered pursuant to K.S.A. 59-505, and amendments thereto.

(b) If, after the application of subsection (a), the elective-share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's probate estate and in the decedent's nonprobate transfer to others other than amounts included under subsection (c)(1) or (3) of K.S.A. 59-6a205, are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that portion of the decedent's nonprobate transfers to others are so applied that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent's probate estate and that portion of the decedent's nonprobate transfers to others in proportion to the value of their interest therein.

(c) If, after the application of subsections (a) and (b), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is so applied that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is equitably apportioned among the recipients of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

History: L. 1994, ch. 132, § 9; Jan. 1, 1995.