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**2018 Edition**

# Rights of Surviving Spouse in Connecticut

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A Guide to Resources in the Law Library

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**See Also:** Property law and family law research guides on the Connecticut Judicial Branch Law Libraries website at <http://www.jud.ct.gov/lawlib/selfguides.htm>.

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# Introduction

## *A Guide to Resources in the Law Library*

- **"Connecticut law does not permit a deceased person to continue to own** property. The statutes of this state set forth a procedure for the orderly transfer of a deceased person's assets either according to his will or the laws of intestacy. See e.g., Connecticut General Statutes §§ 45a-273, et seq. Under the laws of this state competent testators are free to leave their property as they wish, subject only to the limitations of a spousal elective share and a family allowance. Connecticut General Statutes §§ 45a-320, 45a-321, 45a-436." *Skindzier v. Commissioner of Social Services*, No. 0501376 (Conn. Super. Ct., New Britain, Jan. 4, 2001), 28 Conn. L. Rptr. 589 (March 5, 2001), 2001 WL 51663. [Decision affirmed on appeal [258 Conn. 642](#), 784 A.2d 323].
- **Right of Election:** "On the death of a spouse, the surviving spouse may elect, as provided in subsection (c) of this section, to take a statutory share of the real and personal property passing under the will of the deceased spouse..." Conn. Gen. Stat. § [45a-436](#)(a) (2017).
- **Statutory share:** "means a life estate of one-third in value of all the property passing under the will, real and personal, legally or equitably owned by the deceased spouse at the time of his or her death, after the payment of all debts and charges against the estate. The right to such third shall not be defeated by any disposition of the property by will to other parties." Conn. Gen. Stat. § [45a-436](#)(a) (2017).
- **Validity of premarital or post-nuptial agreements:** "The provisions of this section with regard to the statutory share of the surviving spouse in the property of the deceased spouse shall not apply to any case in which, by written contract made before or after marriage, either party has received from the other what was intended as a provision in lieu of the statutory share." Conn. Gen. Stat. § [45a-436](#)(f) (2017).
- **Effect of dissolution, divorce, or annulment:** Such event "shall revoke any disposition or appointment of property made by the will to the former spouse ...unless the will expressly provides otherwise. Property ...shall pass as if the former spouse failed to survive the testator, and other provisions conferring power or office on the former spouse shall be interpreted as if the spouse failed to survive the testator. If provisions of the will of the testator are revoked solely by this section, such provisions shall be revived by the testator's remarriage to the former spouse. A decree of separation which does not terminate the status of husband and wife is not a dissolution or divorce for the purposes of this section." Conn. Gen. Stat. § [45a-257c](#) (2017) [emphasis added].
- **"Merger of civil union into marriage by action of the parties.** (a) On and after April 23, 2009, and prior to October 1, 2010, two persons who are parties to a civil union entered into pursuant to sections [46b-38aa to 46b-38oo](#), inclusive, may apply for and be issued a marriage license, provided such persons are otherwise eligible to marry under chapter 815e and the parties to the marriage will be the same as the parties to the civil union." Conn. Gen. Stat. § [46b-38qq](#) (2017).

- **“Merger of civil union into marriage by default. Exception.** (a) Two persons who are parties to a civil union established pursuant to sections 46b-38aa to 46b-38oo, inclusive, that has not been dissolved or annulled by the parties or merged into a marriage by operation of law under section 46b-38qq as of October 1, 2010, shall be deemed to be married under chapter 815e on said date and such civil union shall be merged into such marriage by operation of law on said date. Conn. Gen. Stat. § [46b-38rr](#) (2017).

# Section 1: Statutory Share in Connecticut

## *A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to the surviving spouse's statutory share of real and personal property despite provisions in a will. Also, legal arrangements by which statutory share may legally be avoided.

### **TREATED ELSEWHERE:**

- If there is no will—see [§ 2 Intestate share](#)
- If estate is insolvent—see [§ 3 Insolvent estate](#)

### **DEFINITIONS:**

- “Under a will, a spouse need only claim the spousal share if disinherited . . . .” [Bezzini v. Department of Social Services](#), 49 Conn. App. 432, 443, 715 A.2d 791 (1998).
- **Dower and curtesy:** “By and large, dower and curtesy have been supplanted by laws that entitle a surviving spouse to choose between accepting whatever is provided for the spouse in the decedent’s will or taking a statutorily fixed percentage of the estate.” [Estate of Herrmann v. Commissioner of Internal Revenue](#), 85 F.3d 1032, 1034-35 (2d Cir. 1996).

### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017).  
§ [45a-436](#). Succession upon death of spouse. Statutory share. [Statutory share see Table 1.](#)  
§ [45a-347](#). Beneficiary designation exempt from laws governing transfer by will.

### **PROBATE COURT RULES OF PROCEDURE:**

- [Probate Court Rules of Procedure](#) (2017)  
Rule 38. Fiduciary Accounting: Requirements for Accounts  
§ 38.1 When principal and income to be reported separately

### **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [In re: Estate of Bilo](#), Superior Court, Judicial District of Hartford, No. CV 16-6070150 (August 14, 2017) (2017 WL 4273980). “On June 16, 1999, the decedent executed his last will and testament (the will) and the trust. Pursuant to the will, the decedent left the rest, residue, and remainder of **his estate to the trust. Upon the decedent’s death, the trust would create two sub-trusts- the marital trust and the estate tax sheltered trust (sheltered trust)...The plaintiff claims that the Probate Court erred in failing to include the trust assets in the decedent’s estate for the calculation of the plaintiff’s statutory share.**”
- [Dinan v. Patten](#), 317 Conn. 185, 116 A. 3d 275 (2015). “The present case requires us to consider the method by which General Statutes § 45a-436 (spousal share statute) requires a surviving spouse's statutory share to be calculated” (188).

"We hold that the trial court properly concluded that: (1) the doctrines of waiver, estoppel and election of remedies do not bar the plaintiff from seeking her statutory share; (2) **because state and federal estate taxes are not "debts and charges against the estate" pursuant to the spousal share statute, the statutory share should be calculated prior to the subtraction of taxes from the value of the estate; General Statutes § 45a-436 (a);** (3) the value of the statutory share should be calculated based on the value of the estate as of the date of the final accounting in anticipation of distribution, rather than the value of the estate at the time of the decedent's death; (4) with respect to the period prior to the date when her statutory share is set out, the plaintiff is entitled to the average yield of one third of the estate during that time; and (5) the trial court properly concluded that the Probate Court properly appointed distributors to set out the plaintiff's statutory share" (193-194).

- Dix v. Dix, Superior Court, Judicial District of New Britain, No. CV13-6019033 (Feb. 9, 2015) (2015 WL 897581). **"It is clear to the court that the intention of Dennis Dix, as manifested by the 'precise wording' of his will, was to disinherit his surviving spouse, Kathleen Dix, save for the bequest of five dollars. He stated his reason for doing so in the will when he described her as having 'abandoned' him.** [FN6]. His intent was made even clearer when he **'begrudgingly' agreed that, if state law required him to leave her a sum in excess of five dollars, the amount could be increased to comply with that law. There is no Connecticut statute that requires a spouse to leave any set amount, or any amount at all, to his surviving spouse."**

**"...The court notes that in Connecticut abandonment, without sufficient cause, is grounds for denying a surviving spouse not only her intestate share but also her statutory share of the deceased spouse's estate. See General Statutes § 45a-436(g)." [FN6]**

"Until 2013 a surviving spouse had to file an election to take the share of her **husband's estate granted her by § 45a-436** within 150 days of the appointment of the first fiduciary for the estate. In this case the first fiduciary was appointed on April 7, 2010. Thus, **the plaintiff's election to take her statutory share had to be filed by September 5, 2010. An election submitted on July 6, 2012 is too late by far."**

- Dinan v. Patten, Superior Court, Judicial District of Waterbury, Nos. CV09-4023634, CV10-6009819, CV11-6012933, CV12-6016447 (March 20, 2013) (2013 WL 1493031, 13). **"Judge Caruso in his decision...dealt in Question One with how to determine the base for the statutory share. Judge Caruso determined that the only**

authority in Connecticut for what is and is not to be deducted in determining a statutory share was *Cranley v. Schirmer*, 27 Conn. Sup. 258, 236 A.2d 332 (1967), which held that federal and state death taxes were not deductible in calculating the statutory share.”

“...the Cranley court determined that a widow’s elective share ‘is to be computed before deduction of the Connecticut succession and estate taxes and all other taxes, but her statutory share is to be charged with that portion of taxes allocable thereto.’ *Cranley v. Schirmer*, 27 Conn. Sup. at 267.”

- [Sandford v. Metcalfe](#), 110 Conn. App. 162, 168-170, 954 A.2d 188 (2008). “The law governing descent and distribution emanates from the legislature and is purely **statutory**.... The legislature has, by statute, carved out exceptions to the statutes governing descent and distribution to deprive an ostensibly rightful heir, falling within the ambit of those exceptions, of an otherwise lawful inheritance. Under [General Statutes (Rev. to 1985)] § 45-273a (a) [now § 45a-436 (g)] a person who, without sufficient cause, abandons his or her spouse is foreclosed from receiving a statutory share of the estate of the deceased spouse. Under [General Statutes (Rev. to 1985)] § 45-279 (a) [now § 45a-447][fn7] a person finally convicted of murder is precluded from inheriting any part of the estate of the deceased **victim**....” (Citations omitted.) *Hotarek v. Benson*, 211 Conn. 121, 125-28, 557 A.2d 1259 (1989). There is, however, no statute barring an attorney who drafted a testamentary instrument from inheriting by the instrument she drafted.

Because there is no statute barring a distribution to Sandford, the heirs at law ask us to use our equitable powers to prevent such a distribution. We cannot do so. **‘Even if the omission of such a statute were the result of legislative oversight or neglect, we have no power to supply the omission or to remedy the effect of the neglect....** [A]ny qualification [of the law of descent and distribution] pronounced by this court would be a judicial grafting of public policy restrictions on an **explicit statutory provision**.... The authorities make clear that judicial tribunals have no concern with the policy of legislation and they cannot engraft upon the provisions of the statutes of descent and distribution an exception to bar an inheritance. . . . The statutes cannot be changed by the court to make them conform to the court’s conception of right and justice in a particular case. . . . To avoid trenching on legislative ground, the court must take the view that if the legislature had intended such an exception from the statutes as is sought in **this case, it would have said so.**” (Citations omitted; internal quotation marks omitted.) *Hotarek v. Benson*, 211 Conn. 121, 128-29, 557 A.2d 1259 (1989).

- [In Re: Estate of Jannette H. Scudder, a/k/a Nettie H. Scutter](#), 15 [Quinnipiac Prob. L.J.](#) 279 (2001). **"The mere fact that a divorce was pending does not create abandonment. Up to the moment a divorce judge grants a divorce, the spouses remain married and they continue to have statutory rights and duties. They are also obligated to one another and are able, until judgment is entered, to reconcile and remain married" (287).**
- [In the Matter of the Estate of Harry A. McQuillen, III](#), 15 [Quinnipiac Prob. L.J.](#) 31 (2000). **"The Executor and the surviving spouse have agreed on the computation of the elective share..., with funding to be in cash. ...What remains to be determined is the manner of the administration of the property for the benefit of the surviving spouse during her lifetime." (37).**

**"When one considers the alternative proposed here for administration of the elective share property, one can only come to the conclusion that a trust is the answer. After all, what is an 'estate which remains open to provide for the fiduciary management of elective share property?' The statutes do not say, the cases do not say, and that means that nobody, especially the fiduciary and the beneficiary, can know and comprehend such a hybrid device." (38).**

**"...The Court therefore holds that the elective share property here will be administered through the vehicle of a trust, in the nature of a testamentary trust, by a trustee the Court will appoint as follows: ...." (39).**

- [Elgar v. Elgar](#), 238 Conn. 839, 840, 679 A.2d 937 (1996). **"Prior to their marriage, they had executed an antenuptial agreement wherein each party had waived his or her rights to the other's property in the event of death or divorce."**
- [Dalia v. Lawrence](#), 226 Conn. 51, 69-70 (1993). **"It is evident, therefore, that surviving spouse's elective share in lieu of what he or she would take under a will does not include the proceeds of a § 36-110(a) account [trust savings account] , because those proceeds cannot be regarded as 'passing under a will' within the meaning of § 45a-436(a)."**
- [Parniawski v. Parniawski](#), 33 Conn. Supp. 44, 46, 359 A.2d 719 (1976). **"This state has placed its stamp of approval on a contract entered into in contemplation of marriage in which each prospective spouse released any claim to the property owned by the other at the time of the marriage or thereafter, agreeing that on the death of either, the survivor should have no claim to his or her property."**
- [Cherniack v. Home National Bank & Trust Co.](#), 151 Conn.

367, 198 A.2d 58 (1964). "It is true that under § 46-12 a surviving spouse is given a stated interest in all of the **'property, real and personal, legally or equitably owned by the other at the time of his or her death.'** But this provision gives no interest in the property of the other before death. Since the plaintiff had no right or interest in the property of the decedent during his lifetime, a valid trust agreement could not be fraudulent as to her. One cannot be defrauded of that to which he has no right. Hall v. Hall, 91 Conn. 514, 518, 100 A. 441. (1917)"

- Sacksell v. Barrett, 132 Conn. 139, 145, 43 A.2d 79 (1945). **"Furthermore, since the adoption of the 1877 act, in deciding whether a widow could by agreement bar her claim to the share which the statute provides, we said: 'On principle there appears to be no good reason why such an agreement, if fairly made and entered into, by a woman of full age, for adequate consideration received, should not be binding upon her.'** Staub's Appeal, 66 Conn. 127, 134, 33 Atl. 615. **The same holds true of the plaintiff's agreement releasing his statutory interest."**
- In re Williamson's Estate, 123 Conn. 424, 428, 196 A. 770 (1937). **"Whether there has been abandonment within this provision of the statute presented a question of fact to be determined by the trial court upon evidence offered before it."**
- Lewis v. Shannon, 121 C. 594, 599, 186 A. 540 (1936). **"In the following cases it was held that a surviving spouse, having elected to take a statutory share instead of a provision under the will, could not, in addition, take under statutes of descent which apply only to intestate estates."**
- Farmers' Loan & Trust Company v. McCarty, 100 Conn. 367, 371, 124 A.40 (1924). **"The widow's election annuls all testamentary provisions in her favor, but it does not annul any testamentary provisions in favor of others . . . . The result is that the provision of section (b) for setting aside one quarter to the residue is temporarily suspended, the provision for the payment of the income of such quarter to the widow is annulled; and since her statutory life use is not defeated by remarriage, the provision that upon her remarriage the corpus of the fund disposed of in section (b) shall go to the testator's son Richard, becomes incapable of execution."**
- Brown's Appeal from Probate. 72 Conn. 148, 154, 44 A. 22 (1899). **"Both these colonies [New Haven and Massachusetts] adopted the English law of dower, giving to the wife a right of dower in any land of which the husband might be seized during coverture [marriage]. Connecticut extended and modified the right of a wife to share in all the**

estate her husband might leave at his death.”

- Harris v. Spencer, 71 Conn. 233, 237, 41 A. 773 (1893).  
“That statute gives a surviving husband a share of the property owned by his wife at her decease; it does not prevent the wife during her life from disposing of her property in any lawful way she pleases, or incumbering it by any lawful agreement.”
- Stewart v. Stewart, 5 Conn. 317, 319, 321 (1824), 1824 Conn. LEXIS 23. “By the law of this state, every married woman living with her husband at his death, has right of dower in one third of the real estate, of which her husband died possessed in his own right.”

“...By the *English* law, the right to dower originates on the marriage; but by our law, it takes its origin at the husband’s death. Our ancestors did not think it expedient to restrain that free transfer of real estate, which the interest of the community requires; and for this reason, the law has given to the wife no lien upon, or right, legal or equitable, to the husband’s estate, during his life.” (emphasis in original)

**WEST KEY NUMBERS:**

- Descent and Distribution.  
Surviving husband or wife #52-67.
- Marriage and Cohabitation.  
Separate property or estate #505.
- Wills.  
Election #778-803.
- Dower and Curtesy.  
Rights and remedies of surviving spouse #170-173.

**DIGESTS:**

- 7 West’s ALR Digest (2015): *Descent and distribution*  
Persons Entitled and Their Respective Shares: Surviving husband or wife
  - § 52. Nature of the right in general
  - § 53. Constitutional and statutory provisions
  - § 62. Estoppel, waiver, or release of right
  - § 63. Forfeiture of right
  - § 64. Election
    - § 65. Right to and necessity for election
    - § 66. Sufficiency
    - § 67. Operation and effect

- ALR Index: *Descent and distribution*  
Surviving Spouse

**ENCYCLOPEDIAS:**

- 25 AmJur 2d *Dower and Curtesy* (2014).  
Surviving Spouse’s Rights and Liabilities  
In general
  - § 29. Priority of dower and curtesy claims as to third parties
  - § 30. Statute of limitations

- Assignment of dower or curtesy
  - § 31. Generally
  - § 32. Estoppel
  - § 33. Rights before assignment
  - § 34. Tenancies created by assignment; tenancy by the dower and by the curtesy
  - § 35. Valuation of tenancy in dower or curtesy
  - § 36. Damages for detention of dower
- Alternatives to dower
  - § 37. Payments in lieu of dower
  - § 38. —Will provisions in lieu of dower; electing against the will
- Quarantine
  - § 49. Nature and length of quarantine
  - § 40. Purpose
  - § 41. Distinction from dower
  - § 42. Abandonment of right
  - § 43. Property affected
  - § 44. Right to and necessity of possession
  - § 45. —Adverse possession
- 23 [Am Jur](#) 2d *Descent and Distribution* (2013).
  - Persons who take and their shares
    - In general
      - § 102. Surviving spouse, generally
      - § 103. Uniform Probate Code
    - Circumstances affecting size of **spouse's share**
      - § 104. Absence of issue, parent or kindred
      - § 105. Changes in value after death of intestate; right to income
      - § 106. Debts of intestate; funeral and administration expenses
      - § 107. Conveyances or encumbrances by intestate
      - § 108. Property in another state
    - Effect of misconduct by surviving spouse
      - § 109. Generally
      - § 110. Desertion, abandonment, or nonsupport
      - § 111. —Consensual separation
      - § 112. —Separation for cause
      - § 113. Adultery
      - § 114. Feloniously killing spouse
    - Effect of marriage incidents; Divorce and separation
      - § 115. Void or voidable marriage
      - § 116. —Effect of prior institution of annulment proceedings
      - § 117. Remarriage after death of the intestate
      - § 118. Bigamous marriage of surviving spouse
      - § 119. Divorce
      - § 120. —Interlocutory decree
      - § 121. Separation agreement
      - § 122. —Construction
      - § 123. —Effect of reconciliation

- 80 [Am Jur](#) 2d Wills (2013).  
Legacies and Devises; Rights, Duties, and Liabilities of Beneficiaries  
Effect on Distribution of Estate  
§ 1386. Components of elective share; expenses
- 28 [C.J.S.](#) *Dower and Curtsey* (2008).  
Dower
  - § 1. Generally
  - § 2. Nature and object
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  - § 4. Extent of dower
  - § 5. Inchoate, consummate and assigned or vested dower
 Requisites to Dower
  - § 9. Generally
  - § 10. Marriage
  - § 12. Title or seisin of husband
  - § 15. Death of husband
 Property and Estates or Interests Subject to Dower
  - § 16. Lands, tenements, and hereditaments in general
  - § 17. Personal property and choses in action in general
  - § 19. Proceeds of sale of land
  - § 21. Proceeds of condemnation of land
  - § 24. Estates of inheritance
 Priorities
  - § 40. Generally
 Inchoate right of dower
  - § 54. Generally
  - § 63. Bar, release, or forfeiture generally
- David Carl Minneman, Annotation, *Surviving Spouse's Right To Marital Share As Affected By Valid Contract To Convey By Will*, 85 [ALR4th](#) 418 (1991).
- V. Woerner, Annotation, *Waiver Of Right To Widow's Allowance By Antenuptial Agreement*, 30 [ALR3d](#) 858 (1970).
- Ann K. Wooster, Annotation, *Validity of Postnuptial Agreements in Contemplation of Spouse's Death*, 87 [ALR6th](#) 495 (2013).
- Annotation, *Abandonment, Desertion, Or Refusal To Support On Part Of Surviving Spouse As Affecting Marital Rights In Deceased Spouse's Estate*, 13 [ALR3d](#) 446 (1967).
- 7 Arnold H. Rutkin et. al., [Connecticut Practice Series, Family Law and Practice with Forms](#) (3d ed. 2010).  
Chapter 7, Property rights of husband and wife
  - § 7:6. Dower and curtesy - In general
  - § 7:7. Waiver of statutory share
  - § 7:8. Forfeiture of statutory rights
  - § 7:9. Effect on lifetime disposition of property

**TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- James I. Dougherty and Louise R. Piscatelli, [LexisNexis Practice Guide: Connecticut Probate and Estate Administration](#) (2016 Edition).  
Chapter 8, Issues relating to surviving spouse
  - § 8.04. Determining whether surviving spouse is entitled to an elective share
  - § 8.05. Calculating elective share amount
  - § 8.06. Evaluating whether surviving spouse should make election
  - § 8.07. Exercising right of election
  - § 8.08. Determining who may exercise elective share on behalf of incapacitated surviving spouse
  - § 8.09. Impact of marriage and divorce on validity of will
  - § 8.10. Validity of pre-nuptial and post-nuptial agreements to settlement of estate
  - § 8.11. Validity of divorce and separation agreements to settlement of estate
  - § 8.12. Impact of divorce and separation agreements on bequests and appointments to surviving spouse
  - § 8.13. Forms and amount of allowance for support
  - § 8.15. Determining whether omitted spouse is entitled to amount form estate
  
- Ralph H. Folsom and Michael P. Kaelin, [Probate Litigation in Connecticut 3d](#) (2018).  
Chapter 1, Will and lifetime transfer contests
  - § 1:24. Spousal right to elect against the will; Spousal contest of lifetime transfers
  
- Victoria Spellman, [LexisNexis Practice Guide: Connecticut Estate Planning](#), (2017 Ed.).  
§ 5.23. Disinheriting the surviving spouse; Spousal shares and allowances
  
- Kate McEvoy, 20 Connecticut Practice Series, [Connecticut Elder Law](#) (2018-19 Ed.)  
§ 4.9. Wills: Failure to make provision for surviving spouse  
§ 14: 7. Beneficiary designations exempt from laws governing transfer by will  
§ 14: 20. Probate Process: Statutory share
  
- Office of the Probate Court Administrator, State of Connecticut, Probate Court User Guide, [Understanding Trusts](#). (2016).
  
- Office of the Probate Court Administrator, State of Connecticut, Probate Court User Guide, [Administration of Decedents' Estates](#). (2018).
  
- Robert F. Cohn, [Connecticut Estate Planning Wills and Trusts Library, Forms and Practice Manual](#). (2018).

§ 28.7. Spousal right of election in Connecticut

- Gayle B. Wilhelm et. al., [Settlement of Estates in Connecticut 3dsett](#) (2018).  
Chapter 8. Suits and claims  
Effect of death on actions and rights of action
  - § 8:274. Statutory share of surviving spouse
  - § 8:275. — Conditions precedent
  - § 8:276. — Premarital agreement
  - § 8:277. — Amount of share
  - § 8:278. — Effect of election
  - § 8:279. — Allocation of property
  - § 8:280. — Support allowanceChapter 9., Accounting and distribution  
Testate distribution: Distribution: Division of assets --  
Spousal share
  - § 9:171. Surviving spouse's claim to a statutory share of estate
  - § 9:172. Other persons eligible to make the spousal election
  - § 9:173. Timing
  - § 9:174. Spousal share
  - § 9:175. - Setting up statutory share
  - § 9:176. - Will provisions void
  - § 9:177. - Disclaiming the statutory share
  - § 9:178. Support allowance -- **Establishing the "statutory share trust"**
  - § 9:260. Special types of distribution decrees - Life estate
- Peter T. Mott, ed., [A Practical Guide to Probate in Connecticutprac](#) (2013).  
Chapter 6. Postmortem planning
  - § 6.1. Introduction
  - § 6.3. Options available to the surviving spouse

**FORMS:**

- James I. Dougherty and Louise R. Piscatelli, [LexisNexis Practice Guide: Connecticut Probate and Estate Administration](#) (2016 Edition).
  - § 8.17. Sample statutory share election

**LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Pratt, David, *Marriage, Divorce, Death, and ERISA*, 31 [Quinnipiac Probate Law Journal](#) 101 (2018).
- Martin D. Begleiter, *Grim Fairy Tales: Studies of Wicked Stepmothers, Poisoned Apples, and the Elective Share*, 78 *Alb. L. Rev.* 521 (2014-2015).
- Barbara J. Stamm, Case Comment, *Dalia v. Lawrence: A Battle Of Statutory Interpretation Versus Public Policy*, 9 [Connecticut Probate Law Journal](#) 357 (1995).

- Mary Moers Wenig, *The Marital Property Law Of Connecticut: Past, Present And Future*, 1990 [Wisconsin Law Review](#) 807 (1990).
- Michael A. Neufeld, *Until Death Or Divorce Do Us Part: Estate Planning For Clients Who Wish To Insulate Their Assets From Their Spouses*, 58 [Conn. B.J.](#) 267 (1984).
- Elias Clark, *The Recapture Of Testamentary Substitutes To Preserve The Spouse's Elective Share: An Appraisal Of Recent Statutory Reforms*, 2 [Connecticut Law Review](#) 513 (1970).

Table 1: Statutory Share

Conn. Gen. Stat. § <a href="#">45a-436</a> (2017)	
<b>Statutory share</b>	(a) On the death of a spouse, the surviving spouse may elect, as provided in subsection (c) of this section, to take a statutory share of the real and personal property passing <b>under the will of the deceased spouse. The "statutory share" means a life estate of one-third</b> in value of all the property passing under the will, real and personal, legally or equitably owned by the deceased spouse at the time of his or her death, after the payment of all debts and charges against the estate. The right to such third shall not be defeated by any disposition of the property by will to other parties.
<b>Effect of will; right of election</b>	(b) If the deceased spouse has by will devised or bequeathed a portion of his or her property to his or her surviving spouse, such provision shall be taken to be in lieu of the statutory share unless the contrary is expressly stated in the will or clearly appears therein; but, in any such case, the surviving spouse may elect to take the statutory share in lieu of the provision of the will.
<b>Time limitation; notice</b>	(c) The surviving spouse, or the conservator or guardian of the estate of the surviving spouse, with the approval, after notice and hearing, of the Probate Court by which such conservator or guardian was appointed, shall, not later than one hundred fifty days after the mailing of the decree admitting the will to probate, file a notice, in writing, of his or her intention to take the statutory share with the Probate Court before which the estate is in settlement, and if such notice is not so filed, the surviving spouse shall be barred of such statutory share.
<b>Support allowance</b>	(d) If the Probate Court has allowed a support allowance under section <a href="#">45a-320</a> from the deceased spouse's estate for support of the surviving spouse and for the support of his or her family, the surviving spouse shall not take his or her statutory share until the expiration of the time for which the support allowance is made.

[cont'd]

Conn. Gen. Stat. § [45a-436](#) (2017) [cont'd]

<b>Personal or real property</b>	(e) The statutory share shall be set out by the fiduciary charged with the administration of the estate or, in the discretion of the Probate Court on its own motion or on application by any interested person, by distributors appointed by the Probate Court. The statutory share may consist of personal property or real property, or both, according to the judgment of the fiduciary or distributors.
<b>Provision by Prior Written Contract</b>	(f) The provisions of this section with regard to the statutory share of the surviving spouse in the property of the deceased spouse shall not apply to any case in which, by written contract made before or after marriage, either party has received from the other what was intended as a provision in lieu of the statutory share.
<b>Effect of Abandonment by Surviving Spouse</b>	(g) A surviving spouse shall not be entitled to a statutory share, as provided in subsection (a) of this section, or an intestate share, as provided in section 45a-437, in the property of the other if such surviving spouse, without sufficient cause, abandoned the other and continued such abandonment to the time of the other's death.

## Section 2: Intestate Share in Connecticut

*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to the surviving spouse's intestate share of real and personal property. Also, legal arrangements by which intestate share may legally be avoided.

### **TREATED ELSEWHERE:**

- If there is a will—see [§ 1 Statutory share](#)
- If estate is insolvent—see [§ 3 Insolvent estate](#)

### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2017) § [45a-437](#). Intestate succession. Distribution to spouse  
§ [45a-257a](#). Failure of testator to provide for surviving spouse who married testator after execution of will. Determination of share of estate  
§ [45a-436](#). Succession upon death of spouse. Statutory share  
(g) A surviving spouse shall not be entitled to a statutory share, as provided in subsection (a) of this section, or an intestate share, as provided in section [45a-437](#), in the property of the other if such surviving spouse, without sufficient cause, abandoned the other and continued such abandonment to the time of the other's death.

### **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- In Re: Johnson Lee, 24 [Quinnipiac Prob. L.J.](#) 1, (2010).  
"The Connecticut Supreme Court has not addressed the circumstances under which a surviving spouse is entitled to **modify the decedent's will by subjecting** it to the laws of intestacy. The only reported case specifically addressing section 45a-257a(a) is *In Re Estate of Charles W. Ball*, 13 [Quinnipiac Prob. L.J.](#) 5 (1998), where Judge Kurmay opined: **'The obvious purpose of the present statute is to ensure that the contingency of marriage is not overlooked in the drafting of a will....**The central issue which a court must determine is not the adequacy of the provision for the surviving spouse, but whether such provision has been made at all.'" (5)  
**"Ms. Sessa was 'provided for' as defined under section 45a-257a(a), under the pour-over provision in the will. Furthermore, the Court finds the second exception under section 45a-257a(a)(2) has been met. The amount devised to Ms. Sessa, which the Court may consider under the second exception, leads to the reasonable inference that Mr. Lee intended that the Helen Sessa Gift Trust and Shanghai apartment be in lieu if a testamentary provision; she is therefore not entitled to an intestate share."** (8)
- In Re Estate of Charles W. Ball, [13 Quinnipiac Prob. L.J.](#) 5 (1998). "The issue before the Court is whether the

decedent's widow is entitled to an intestate share, despite the failure of the will to provide for her monetarily." (7).

"In this case, the widow was mentioned specifically - - not as a wife, but as 'a special friend and mother of my daughters.' Although not providing monetarily for her, he did name her as successor executrix and trustee. It is **most** significant that he named these two daughters as the residuary beneficiaries of his estate, with the money to be placed in trust and managed by the widow herself. In addition, he made her the joint owner of a personal bank account. Finally, he bestowed upon her the honor and responsibility as serving as executrix, if his own attorney could or would not. It is abundantly clear that he carefully considered his 'special friend' and soon to be wife. "

"...However, the status of marriage has bestowed upon his widow certain rights which she would not have enjoyed before their marriage: for example, her right to seek an elective share and her right to seek a support allowance." (9).

- [Dinan v. Marchand](#), 279 Conn. 558, 903 A.2d 201 (2006). "The will did not provide for the contingency of marriage. Absent the codicil, the testator's marriage to the plaintiff would have revoked the will in its entirety; General Statutes (Rev. to 1995) § 45a-257; see also General Statutes § 45a-257e; leaving the plaintiff with an intestate share of the estate, in this case, one half outright. See General Statutes § 45a-437, which provides in relevant part: 'Intestate succession. Distribution to spouse. (a) If there is no will . . . the portion of the intestate estate of the decedent . . . which the surviving spouse shall take is . . . (4) If there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse, one-half of the intestate estate **absolutely.**'

'We note that for wills executed after January 1, 1997, a testator's marriage after the execution of a will no longer revokes the will. Rather, it remains with a surviving spouse, who is to receive an intestate share in the decedent's estate. General Statutes § 45a-257a (a).' *Dinan v. Marchand*, supra, [492] 91 Conn. App. 494-95 n. 2." [FN4]

- [Elgar v. Elgar](#), 238 Conn. 839, 840, 679 A.2d 937 (1996). "Prior to their marriage, they had executed an antenuptial agreement wherein each party had waived his or her rights to the other's property in the event of death or divorce. In 1990 the decedent died intestate."
- [Dalia v. Lawrence](#), 226 Conn. 51, 627 A.2d 392 (1993). "The principal issue in this appeal is whether valid trust savings accounts, established by a decedent pursuant to General

Statutes § 36-110(a), must be included in the statutory intestate share of the surviving spouse of the decedent pursuant to General Statutes (Rev. to 1989) § 45-273a(b).”

- Phoebe Lewis, et als, Appeal from Probate Estate of Anna J. Eno, 3 Conn. Supp. 444, 446 (1936), 1936 WL 1271.  
“... **When a surviving spouse renounces the provision of the will of his deceased spouse, does he not take of such estate not only the life use of one-third, but such other of the estate, under the statute directing distribution of intestate estate as such statute may apply to him?**”

“Had Anna J.E. Eno died without a will—intestate as to all of her property—being childless and without a parent surviving, the appellee [surviving spouse] would have taken her entire intestate estate under the statute. Has not our Legislature directed the disposition of intestate estate? If the whole, why not a **part?**”

- Kingsbury v. Scovill’s Administrator, 26 Conn. 349, 352 (1857), 1857 WL 959. “The widow of Mr. Scovill, who died intestate, having died after administration granted on his estate and before distribution, the question is, whether her personal representatives are entitled to the distributive part of his personal estate to which she would have been entitled if she had been living at the time of the distribution, or whether it belongs to his children. We are clearly of the opinion that her right to that part of his estate was a present vested interest on his death, which was not defeated by her subsequent death, and that it therefore belongs to her representatives. An equitable right to it vested in her immediately on the decease of her husband,....”

**WEST KEY NUMBERS:**

- Executors and Administrators #116.  
Allowance to surviving wife, husband or children #173-201.
- Descent and Distribution #24.  
Surviving husband or wife #52-67.
- Wills #409.  
Election #778-803.

**DIGESTS:**

- 7 [West’s ALR Digest](#) (2015): *Descent and distribution*  
Persons entitled and their respective shares: Surviving husband or wife
  - § 52. Nature of the right in general
    - (1). In general
    - (2). Rights of surviving wife in general
    - (3). Rights of surviving husband in general
  - § 53. Constitutional and statutory provisions
  - § 54. Issue of intestate also surviving
  - § 55. —In general
  - § 56. —Issue of former marriage
  - § 57. Failure of issue of intestate
  - § 58. Failure of issue and of other kindred of intestate

- § 59. Property acquired by intestate by gift, devise, or descent
- § 60. —In general
- § 61. —From former husband or wife
- § 62. Estoppel, waiver, or release of right
- § 63. Forfeiture of right

- [ALR Index](#): *Descent and distribution*  
Surviving Spouse

**ENCYCLOPEDIAS:**

- 26B [C.J.S.](#) *Descent and distribution* (2011).  
Surviving Husband or Wife
  - § 67. Generally
  - § 68. Property in which surviving spouse shares
  - § 69. Effect of will; rights of pretermitted spouse
  - § 70. Effect of survival of issue or failure of issue of intestate
  - § 71. Rights in case of remarriage
  - § 72. Waiver, release, or estoppel
  - § 73. Forfeiture of rights by misconduct
  - § 74. Effect of divorce
- 23 [AmJur](#) 2d *Descent and distribution* (2013).  
Persons who take and their shares  
In general
  - § 102. Surviving spouse, generally
  - § 103. Uniform Probate Code
 Circumstances **affecting size of spouse's share**
  - § 104. Absence of issue, parent or kindred
  - § 105. Changes in value after death of intestate; right to income
  - § 106. Debts of intestate; funeral and administration expenses
  - § 107. Conveyances or encumbrances by intestate
  - § 108. Property in another state
 Effect of misconduct by surviving spouse
  - § 109. Generally
  - § 110. Desertion, abandonment, or nonsupport
  - § 111. —Consensual separation
  - § 112. —Separation for cause
  - § 113. Adultery
  - § 114. Feloniously killing spouse
 Effect of marriage incidents; Divorce and separation
  - § 115. Void or voidable marriage
  - § 116. —Effect of prior institution of annulment proceedings
  - § 117. Remarriage after death of the intestate
  - § 118. Bigamous marriage of surviving spouse
  - § 119. Divorce
  - § 120. —Interlocutory decree
  - § 121. Separation agreement
  - § 122. —Construction
  - § 123. —Effect of reconciliation

## **TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Gayle Wilhelm et al., Connecticut Estates Practice: [Settlement of Estates in Connecticut 3d](#) (2018).  
Chapter 9. Accounting and distribution  
Nature and elements of distribution: intestate distribution  
§ 9:149. Laws of intestate distribution – Spouse only  
§ 9:150. — Spouse and issue of decedent  
§ 9:151. -- Spouse not parent to all children  
§ 9:152. — **Relationship of intestate share to spouse’s right of election**  
§ 9:155. — Spouse and parent but not issue  
§ 9:164. — General rules -- **Determination of “issue”**
- Gayle Wilhelm et al., Connecticut Estates Practice: [Drafting Trusts in Connecticut 2d](#) (2018).  
Chapter 1. The use of trusts in estate planning  
§ 1:2 Commentary
- Ralph H. Folsom and Michael P. Kaelin, Connecticut Estates Practice: [Probate Litigation in Connecticut 3d](#) (2018).  
§1:18 Revocation (of Will): Generally; marital relations and children
- Laura Weintraub Beck et al., Connecticut Estates Practice: [Drafting Wills in Connecticut 3d](#) (2018-2019).  
§ 20:5 Clause explaining disinheritance of named heir
- Kate McEvoy, 20 Connecticut Practice Series, [Connecticut Elder Law](#) (2018-19 Ed.)  
§ 14:21. Intestate share
- Robert F. Cohn, [Connecticut Estate Planning Wills and Trusts Library, Forms and Practice Manual](#) (2018).  
§ 28.1.2. Operation of Intestacy Law – Share of surviving spouse and others
- Peter T. Mott, ed., [A Practical Guide to Probate in Connecticut](#) (2013).  
Chapter 6. Postmortem planning  
§ 6.2. Intestacy

## **LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Barbara J. Stamm, Case Comment, *Dalia v. Lawrence: A Battle Of Statutory Interpretation Versus Public Policy*, 9 [Connecticut Probate Law Journal](#) 357 (1995).
- Mary Moers Wenig, *The Marital Property Law Of Connecticut: Past, Present And Future*, 1990 [Wisconsin Law Review](#) 807 (1990).
- Michael A. Neufeld, *Until Death Or Divorce Do Us Part: Estate Planning For Clients Who Wish To Insulate Their Assets From Their Spouses*, 58 [Conn. B.J.](#) 267 (1984).

- Elias Clark, *The Recapture Of Testamentary Substitutes To Preserve The Spouse's Elective Share: An Appraisal Of Recent Statutory Reforms*, 2 [Connecticut Law Review](#) 513 (1970).

Table 2: Spouse's Intestate Share

<b>Spouse's Intestate Share</b>	
<p>Conn. Gen. Stat. § <a href="#">45a-437</a> (2017). Intestate succession. Distribution to spouse</p>	<p>(a) If there is no will, or if any part of the property, real or personal, legally or equitably owned by the decedent at the time of his or her death, is not effectively disposed of by the will or codicil of the decedent, the portion of the intestate estate of the decedent, determined after payment of any support allowance from principal pursuant to section 45a-320, which the surviving spouse shall take is:</p> <p>(1) If there is no surviving issue or parent of the decedent, the entire intestate estate absolutely;</p> <p>(2) If there is no surviving issue of the decedent but the decedent is survived by a parent or parents, the first one hundred thousand dollars plus three-quarters of the balance of the intestate estate absolutely;</p> <p>(3) If there are surviving issue of the decedent all of whom are also issue of the surviving spouse, the first one hundred thousand dollars plus one-half of the balance of the intestate estate absolutely;</p> <p>(4) If there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse, one-half of the intestate estate absolutely.</p> <p>(b) For the purposes of this section:</p> <p>(1) Issue includes children born out of wedlock who qualify for inheritance under the provisions of section 45a-438 and the legal representatives of such children;</p> <p>(2) A father of a child born out of wedlock shall be considered a parent if the father qualifies for inheritance from or through the child under the provisions of section 45a-438b.</p>
<p>Conn. Gen. Stat. § <a href="#">45a-257a</a> (2017). Failure of testator to provide for surviving spouse who married testator after execution of will. Determination of share of estate.</p>	<p>(a) If a testator fails to provide by will for the testator's surviving spouse who married the testator after the execution of the will, the surviving spouse shall receive the same share of the estate the surviving spouse would have received if the decedent left no will unless: (1) It appears from the will that the omission was intentional; or (2) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements, or is reasonably inferred from the amount of the transfer or other evidence.</p> <p>(b) In satisfying a share provided in subsection (a) of this section, devises and legacies made by the will abate in accordance with section 45a-426.</p>

	(c) A surviving spouse receiving a share under this section may not elect to take a statutory share under section 45a-436.
Conn. Gen. Stat. § <a href="#">45a-436</a> (g) (2017).	A surviving spouse shall not be entitled to a statutory share, as provided in subsection (a) of this section, or an intestate share, as provided in section 45a-437, in the property of the other if such surviving spouse, without sufficient cause, abandoned the other and continued such abandonment to the time of the other's death.

Table 3: Dalia v. Lawrence

<p><a href="#"><u>Dalia v. Lawrence</u></a> 226 Conn. 51, 68, 627 A.2d 392 (1993)</p>
<p>"Commentators have acknowledged other legal arrangements by which a Connecticut decedent may validly avoid his or her surviving spouse's intestate share.<sup>10</sup></p> <p><sup>10</sup> <b>See M. Wenig</b>, 'The Marital Property Law of Connecticut: Past, Present and Future,' 1990 Wis. L. Rev. 807, 855 (suggesting such arrangements as an "inter vivos trust with reserved life estate and power of appointment; revocable inter vivos trust; life insurance; refund annuity; revocable or irrevocable joint and survivorship holdings; IRAs and nonqualified retirement plans; pay-on-death U.S. bonds and other P.O.D. contractual benefits; and even a deed deliverable to grantee on death of grantor"); <b>E. Clark</b>, 'The Recapture of Testamentary Substitutes to Preserve the Spouse's Elective Share: An Appraisal of Recent Statutory Reforms,' 2 Conn. L. Rev. 513, 531 (1970) (suggesting insurance, annuities, pensions, United States bonds payable to children on parent's death, or various trust arrangements)."</p>

## Section 3: Insolvent Estate

### *A Guide to Resources in the Law Library*

#### **SCOPE:**

Bibliographic resources relating to an insolvent estate and the surviving spouse.

#### **DEFINITIONS:**

- “But even the fact of insolvency is not, in and of itself, a ground for denying an allowance if one is found to be **necessary.**” [Baldwin v. Trademens National Bank](#), 147 Conn. 656, 662, 165 A.2d 331 (1960).

#### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017).  
§ [45a-435](#). Personal property that may be set out to spouse from insolvent estate  
  
§ [45a-383](#). Settlement of estate without claims procedures  
  
§ [52-352b](#). Exempt property

#### **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Baldwin v. Trademens National Bank](#), 147 Conn. 656, 662, 165 A.2d 331 (1960). “Rather the statute contemplates the award of such amount as may be necessary, in addition to the other assets of the spouse, to maintain a household and **manner of living appropriate to the decedent’s station in life**, in view of the financial condition of his estate upon his death . . . . Of course, an allowance cannot be granted for the purpose of enriching the widow at the expense of others entitled to the estate or the rights of creditors in case of insolvency. But even the fact of insolvency is not, in and of itself, a ground for denying an allowance if one is found to **be necessary.**”
- [Barnum v. Boughton](#), 55 Conn. 117, 118, 10 A. 514 (1887). “**If there are wife and children surviving, presumably they are without means for providing themselves with instant food and fuel, except as they may claim these necessities from the hand of public charity; and must so continue until the law has completed the work of division; a work of statutory necessity, spreading over a considerable space of time. In the interest of humanity and for the prevention of what in almost every case would be an unseemly and unnecessary demand upon public charity, the law provides that the probate court may make such temporary allowance to the widow or children as shall supply their daily recurring needs. Of course, if it shall finally result that the estate is not equal to the debts, these last are to bear the burden of the temporary necessities of the family: This is no hardship because every man knows when he gives credit to another that death may overtake the debtor when he is unable to pay and that a portion of such assets as he may have will be expended for the**

**temporary support of his wife and children. It is a risk intentionally assumed, and the result therefore not to be complained of.”** [emphasis added].

**WEST KEY NUMBERS:**

- Executors and Administrators.  
Insolvent estates #408-419.

**ENCYCLOPEDIAS:**

- 34 [C.J.S.](#) *Executors and Administrators* (2009).  
Insolvent estates  
§§ 829-835. In general  
§§ 836-838. Collection of estate and sales of estate property  
§§ 839-841. Claims and rights of creditors  
§§ 842-849. Paying of claims and distribution
- 31 [Am Jur](#) 2d *Executors and Administrators* (2012).  
Insolvent estates  
§ 792. Generally  
§ 793. Claims of creditors of same class  
§ 794. Mistake as to solvency of estate  
§ 795. Avoidance of unrecorded mortgage

**TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Gayle Wilhelm et al., Connecticut Estates Practice: [Settlement of Estates in Connecticut 3d](#) (2018).  
Chapter 7. Management of estates by executors and administrators  
Statutory provisions -- The family allowance for support  
§ 7:95. – Other bars -- Insolvency
- Kate McEvoy, 20 Connecticut Practice Series, [Connecticut Elder Law](#) (2018-19 Ed.)  
§ 14:22. Insolvent estate
- Steven M. Fast, B. Dane Dudley, et al., 2 [A Practical Guide to Estate Planning in Connecticut](#) (2013).  
§ 13.5.1. Intestacy

**LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Elaine Hightower Gagliardi et. al., *Administration of Insolvent Estates in Connecticut*, 69 [Conn. B.J.](#) 386 (1995).

# Section 4: Support during Settlement of the Estate

## *A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to the surviving spouse's allowance during the settlement of the estate.

### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2017).  
§ [45a-320](#). Allowance for support of surviving spouse and family. Family car  
  
§ [45a-321](#). Custody of real property. Products and income of real property. Family may occupy homestead.

### **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Scott, Jr., Executor v. Mark M. Heinonen](#), 118 Conn. App. 577, 578, 985 A.2d 358 (2009). **"The issue in this appeal is whether the executor of an estate, who has been authorized to market certain real property of a decedent to satisfy the financial obligations of the decedent's estate, has the power to evict an occupant to whom the property has specifically been devised by the will of the decedent."**
- [Estate of Franz F. Goldbach](#), 7 Connecticut Probate Law Journal. 239, 241 (1993). **"The law is incontrovertibly clear that the petitioner must be financially dependent upon the decedent in order to avail himself of the free use and occupancy of the family home for any period of time."**
- [. 602, 440 A.2d 242 \(1981\)](#). **"Upon application of the defendant Leon Glemboski, as executor of the estate, on February 13, 1970 the Probate Court awarded the plaintiff \$400 per month widow's allowance retroactive to March, 1969. Although the executor tendered payment, the plaintiff refused to accept the allowance checks" (603).**

**"...More than five years after their father's death, Thomas, his brothers and sister finally settled the will contest by entering into an agreement.... In response to the executor's motion to modify and terminate the widow's allowance in accordance with the agreement, an ex parte probate decree ... retroactively limited the widow's allowance to \$5500 and ordered the allowance terminated as of the date that amount had accrued. The plaintiff has not appealed that decree. The plaintiff, however, did timely appeal from the ... probate decree allowing and approving the final account of the executor and ordering distribution of the estate. ...The trial court dismissed the appeal on the grounds ... that the adequacy of a widow's allowance cannot be collaterally attacked on an appeal from the final account of the estate..." (604).**

[Sklar et al. v. Estate of Sklar](#), 168 Conn 101, 108-109, 357 A.2d 900 (1975). **"We conclude that the public policy expressed in the latter portion of s 46-12 of the General Statutes [now § 45a-436] authorizing the Probate Court to grant a widow's allowance pending the settlement of her husband's estate is so independent of the will, well established, and compelling, that it must prevail over any contrary intention expressed in the husband's will.** Accordingly, an attempt in his will to interfere with the **exercise of the Probate Court's discretion or the right of the widow to the benefit of the allowance for support permitted to her by statute, or to require her to make an election between the benefits under his will and the statutory allowance during the period of administration, is contrary to public policy and void."**

- [Baldwin v. Trademens National Bank](#), 147 Conn. 656, 662, 165 A.2d 331 (1960). **"Rather the statute contemplates the award of such amount as may be necessary, in addition to the other assets of the spouse, to maintain a household and manner of living appropriate to the decedent's station in life, in view of the financial condition of his estate upon his death . . . . Of course, an allowance cannot be granted for the purpose of enriching the widow at the expense of others entitled to the estate or the rights of creditors in case of insolvency."**
- [Barnum v. Boughton](#), 55 Conn. 117, 118, 10 A. 514 (1887). **"If there are wife and children surviving, presumably they are without means for providing themselves with instant food and fuel, except as they may claim these necessities from the hand of public charity; and must so continue until the law has completed the work of division; a work of statutory necessity, spreading over a considerable space of time. In the interest of humanity and for the prevention of what in almost every case would be an unseemly and unnecessary demand upon public charity, the law provides that the probate court may make such temporary allowance to the widow or children as shall supply their daily recurring needs."**
- [Staub's Appeal from Probate](#), 66 Conn. 127, 133, 33 A. 615 (1895). **"The principal question in the case relates to the effect of the ante-nuptial contract upon the right of the widow to claim or receive an allowance."**
- [Havens et al. Appeal from Probate](#), 69 Conn 684, 695-96 38 A. 795 (1897). **"...[T]he prayer for an allowance out of the estate during the settlement of the same, ought to be granted, and ...the amount deemed necessary by the court for the support of the widow during the settlement of the estate is the monthly payment named. In determining, in**

pursuance of the statute, the amount it judges necessary for the support of the widow during the settlement of the estate, as so many dollars per month, the court necessarily determines that a monthly payment of such sum during the settlement of the estate is the amount it judges necessary for support during that period. No other construction is permissible.”

**WEST KEY NUMBERS:**

- Executors and Administrators.  
Allowance to surviving wife, husband, or children #173-201.

**DIGESTS:**

- 9 [West's ALR Digest](#) (2004): *Executors and Administrators*.  
Allowances to surviving wife, husband, or children  
§ 175. Quarantine or other occupation or use of property  
§ 176. Maintenance and support  
§ 180. Persons entitled  
§ 181. Property subject to allowance  
§ 182. Priority over other claims  
§ 194. Allowance by court

**ENCYCLOPEDIAS:**

- 34 [C.J.S.](#) *Executors and Administrators* (2009).  
Allowance to Surviving Spouse or Children  
§§ 460-476. In general  
§§ 477-479. Persons entitled  
§§ 480-482. Property subject to allowance  
§§ 483-484. Priority over other claims  
§§ 485-494. Bar, waiver, or relinquishment  
§§ 495-512. Practice and procedure  
§§ 513-514. Rights of creditors, heirs, distributees, or legatees
- 31 [AmJur](#) 2d *Executors and Administrators* (2012).  
Family Allowance  
§§ 639-644. Preliminary considerations  
§§ 645-650. Persons entitled  
§§ 651-653. Payment and amount  
§§ 654-675. Waiver or relinquishment of right  
§§ 676-680. Practice and procedure  
§§ 681-683. Uniform Probate Code
- John D. Perovich, Annotation, *What Is "Necessary" Furniture Entitled To Exemption From Seizure For Debt*, 41 [ALR3d](#) 607 (1972).
- Annotation, *Family Allowance From Decedent's Estate As Exempt From All Attachment, Garnishment, Execution, And Foreclosure*, 27 [ALR3d](#) 863 (1969).
- Gayle Wilhelm et al., Connecticut Estates Practice: [Settlement of Estates in Connecticut 3d](#) (2018).  
Chapter 7. Management of estates by executors and administrators

**TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

#### Family rights during administration

- § 7:70. Statutory provisions
- § 7:72. – The right to occupy the family home
- § 7:75. The family allowance of support- In general
- § 7:76. – Nature and purpose of allowance
- § 7:77. – Nature of allowance
- § 7:78. – Priority of allowance
- § 7:80. -- Amount of allowance
- § 7:81. --- Appeal
- § 7:82. --- Necessary allowance
- § 7:83. --- Necessity
- § 7:84. --- Purpose
- § 7:85. --- Overlapping incomes
- § 7:86. – Duration and mode of payment of allowance
- § 7:96. – Procedure of granting, revoking, or modifying allowance
- § 7:97. -- Application
- § 7:98. – The right to use of the family car

- James I. Dougherty and Louise R. Piscatelli, [LexisNexis Practice Guide: Connecticut Probate and Estate Administration](#) (2016 Edition).
  - § 8.13. Forms and amount of allowance for support
- Ralph H. Folsom and Michael P. Kaelin, [Probate Litigation in Connecticut 3d](#) (2018).
  - Chapter 4, Fiduciary litigation
    - § 4:15 Family allowances during probate
- Peter T. Mott, ed., [A Practical Guide to Probate in Connecticut](#) (2013).
  - Chapter 6. Postmortem planning
    - § 6.3.2. Spousal allowance
    - § 6.3.3. Automobile
    - § 6.3.4. Family occupancy of decedent's primary residence

#### **FORMS:**

- [PC-202](#), Rev. 7/16, Petition/Support Allowance.

## Section 5: Inchoate Rights

### *A Guide to Resources in the Law Library*

#### **SCOPE:**

- Bibliographic resources relating to inchoate rights

#### **DEFINITIONS:**

- **Inchoate right.** "The universal rule is that the right of either husband or wife in the real property of the other, of which said other died seised, is conditioned solely upon survivorship. If the one claiming such interest die before the one seised of the fee, such death wholly extinguishes such interest. During the life of such consort such interest in **realty is usually spoken of as 'inchoate right.'** ... It is, in short, merely the beginning of a right that does not ripen unless the one possessing such right in the property of another shall survive." Long v. Long, 124 N.E. 161, 162, 5 ALR 1943, 1344 (1919).

#### **STATUTES:**

- Conn. Gen. Stat. (2017).  
§ [46b-36](#). Property rights of spouse not affected by marriage

#### **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Cherniack v. Home National Bank & Trust Co.](#), 151 Conn. 367, 370, 198 A.2d 58 (1964). "It is important to bear in mind in this connection that under Connecticut law neither husband nor wife acquires, by virtue of the marriage, any interest in the real or personal property of the other during **that other's lifetime. General Statutes § 46-9** (now Conn. Gen. Stat. § [46b-36](#)). In other words either spouse may, in his lifetime, without the consent or knowledge of the other, make a valid gift, or otherwise dispose of his property, to a **third party.**"

#### **TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Ralph H. Folsom, Laura Weintraub Beck, [Connecticut Estates Practice: Revocable Trusts and Trust Administration](#) in Connecticut (2018).  
§ 5:9. Rights of spouses
- 7 Arnold H. Rutkin et. al., [Connecticut Practice Series, Family Law and Practice with Forms](#) (3d ed. 2010).  
**Chapter 7, "Property Rights of Husband and Wife."**  
§ 7:2 Property rights of married persons  
§ 7:9 Effect on lifetime disposition of property

#### **ENCYCLOPEDIAS:**

- 25 [AmJur](#) 2d Dower and Curtesy (2014).  
Rights during marriage: Inchoate dower and curtesy initiate  
§§ 18 – 20. In General  
§§ 21 – 28. Termination