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Wills, Trusts, and Estates for
Legal Assistants

Sixth Edition



Chapter 7

**CHANGING CIRCUMSTANCES
AFTER WILL EXECUTION –
PERSONS**



Chapter Objectives

- Explain the concept of a surviving spouse's forced or elective share
- Discuss how marriage or divorce changes a testator's planned distribution
- Define pretermitted heir
- Understand the concept of lapsed gifts and how anti-lapse statutes operate
- Describe the operation of the cy pres doctrine



Forced or Elective Share

- A surviving spouse's statutory right to a portion of the deceased spouse's estate in lieu of the benefits, if any, provided in the will.



Methods for Computing Forced Share (slide 1 of 3)

- Fixed percentage of net probate estate
- Fixed percentage subject to percentage to children
- Minimum dollar amount plus fixed percentage of additional property
- Variable percentage depending on length of marriage

Methods for Computing Forced Share (slide 2 of 3)

- A fixed percentage of the net probate estate, for example, one-third.
- Fixed percentages of the net probate estate depending on the number of children, with the surviving spouse receiving a smaller percentage if the deceased spouse had children, for example, one-half if no children, one-third if children.

Methods for Computing Forced Share (slide 3 of 3)

- A minimum dollar amount plus a fixed percentage of any additional property in the net probate estate, for example, the first \$100,000 plus one-third of any excess.
- Variable percentages depending on the length of the marriage, for example, UPC § 2-202, which begins at 3 percent for a marriage lasting one to two years and increases to 50 percent for marriages of fifteen or more years.

Pretermitted Child

- A child unintentionally omitted from a will.



Excluded Situations (Pretermitted Children)

- Testator's will actually provides for the pretermitted child.
- Testator provided for the pretermitted child by way of a nonprobate transfer.
- Extrinsic evidence demonstrates the testator's intent to exclude pretermitted children.
- Testator's will demonstrates an intent for pretermitted children not to share in the testator's estate.
- Testator's entire estate is left to the pretermitted child's other parent.

Lapsed Gift

- An intended gift that does not take effect because the beneficiary has predeceased the testator or is treated as having done so.



Anti-Lapse Statute

- A statute that provides for substitute beneficiaries to prevent a lapsed gift.



Cy Pres

- A doctrine of equitable approximation authorizing a court to substitute a charitable beneficiary or purpose for a testamentary charitable gift that is impossible or impractical to fulfill.



Survival Statute

- A statute specifying a minimum period by which a beneficiary must outlive the testator to take a testamentary gift.

