

Elective Share:

A Fresh Look

The Probate Team
October 9, 2015

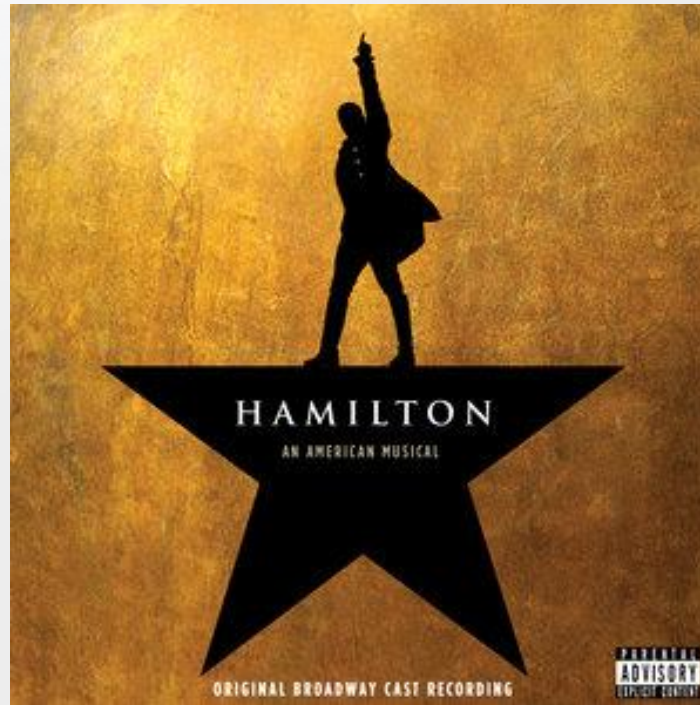
An Overview



An Overview

- History Lesson
- Elective Estate
 - What's In and What's Out
- Satisfaction
 - Including Trusts
- Predictions
- Recent Cases
- And, then maybe something a little different

A History Lesson





LAIRD A. LILE, P.A.

ATTORNEY AND COUNSELLOR AT LAW

A History Lesson

1999

2001, 2002, 2004,
2006, 2007, 2009,
2010

Elective Estate

- Step 1 in determining the elective share
- A number to multiply by 30%

Florida Probate Rules

- The Procedure: Rule 5.360
- Elective Share Inventory: Rule 5.340(g)

Elective Estate

What's In?

Elective Estate: What's In

- Probate Estate
- Payable on Death/Transfer on Death Accounts
- Co-ownership with Rights of Survivorship
- Tenancies by Entireties
- Revocable Transfers, including Revocable Trusts
- Certain Irrevocable Transfers
- IRAs and other Retirement Accounts
- Life Insurance on Decedent – only net CSV
- Gifts Within One Year of Death, with exceptions
- Transfers in Satisfaction of Elective Share



LAIRD A. LILE, P.A.

ATTORNEY AND COUNSELLOR AT LAW

Elective Estate

What's Out?

Elective Estate: What's Out?

- Irrevocable Transfers prior to October 1, 1999
- Irrevocable Transfers prior to Marriage to Spouse
- Transfers for Adequate Consideration in Money, etc.
- Transfers with Written Consent of Spouse
- Life Insurance on Decedent – in Excess of net CSV
- Life Insurance Maintained pursuant to Court Order
- Decedent's one-half of Community Property
- Qualifying Special Needs Trust
- General Power of Appointment
- Protected Homestead

Elective Estate: What's Out?

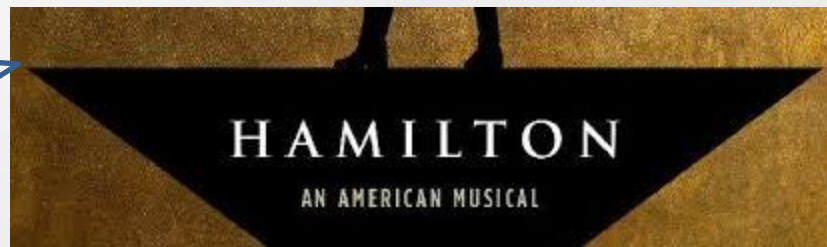
One More Hidden In Effective Date Provisions

732.2155(6): Elective share does not apply to trusts if:

- (a) In trust at all times between October 1, 1999, and death;
- (b) Not married to surviving spouse when transferred; and
- (c) A nonmarital asset as defined in s. 61.075.

An Election?

That's a
floor



Elective Estate

Satisfaction of
Elective Share
Amount

Satisfaction

- Decedent's estate plan
 - Specified source
 - Assets passing to or for spouse
- If shortfall:
 - Probate estate and revocable trust
 - Direct recipients

Satisfaction: In Trusts

- Elective Share Trusts, including conditional
 - All income and right to make productive
 - No other current beneficiaries
 - 50%, 80%, 100%
- Qualified Special Needs Trusts
 - Ill or disabled spouse

Predictions





ns

Predictions

- Revisit elective share percentage
 - Why is it currently 30%?
 - Sliding Scale originally proposed in 1999:

Decedent and Spouse Married:	Elective Share Percentage:
Less Than 5 years	10% of the Elective Estate
5 Years But Less 15 Years	20% of the Elective Estate
15 Years But Less Than 25 Years	30% of the Elective Estate
25 Years or More	40% of the Elective Estate

Predictions

- Chancery regime for costs and attorney fees
- Protected Homestead and Elective Share

Recent Cases

- Dinkins v. Dinkins
 - A choice is not a penalty; conditional elective share trust
- Estate of Magee
 - Elective share is constitutional
- Janien v. Janien
 - Must comply with Elective Share Trust Requirements

And now, for something a little different





Sour Creme