



Code of Virginia
Section 64. 64.2-309, 310, 311, 314
Family Allowance, Exempt Property, Homestead Allowance, Waiver

§ 64.2-309. Family allowance. (Replaced § 64.1-151.1 effective October 1, 2012.)

A. In addition to any other right or allowance under this article, upon the death of a decedent who was domiciled in the Commonwealth, the surviving spouse and minor children whom the decedent was obligated to support are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance shall not continue for longer than one year if the estate is inadequate to discharge all allowed claims. The family allowance may be paid as a lump sum not to exceed \$24,000, or in periodic installments not to exceed \$2,000 per month for one year. It is payable to the surviving spouse for the use of the surviving spouse and minor children or, if there is no surviving spouse, to the person having the care and custody of the minor children. If any minor child is not living with the surviving spouse, the family allowance may be made partially to the spouse and partially to the person having the care and custody of the child, as their needs may appear. If there are no minor children, the allowance is payable to the surviving spouse.

B. The family allowance has priority over all claims against the estate.

C. The family allowance is in addition to any benefit or share passing to the surviving spouse or minor children by the will of the decedent, by intestate succession, or by way of elective share.

D. The death of any person entitled to a family allowance terminates the person's right to any allowance not yet paid. (1981, c. 580, §§ 64.1-151.1, 64.1-151.4; 1987, c. 222; 1990, c. 831; 1996, c. 549; 2001, c. 368; 2012, c. 614; 2014, c. 532.)

§ 64.2-310. Exempt property. (Replaced § 64.1-151.2 effective October 1, 2012.)

A. In addition to any other right or allowance under this article, the surviving spouse of a decedent who was domiciled in the Commonwealth is entitled from the estate to value not exceeding \$20,000 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the minor children of the decedent are entitled in equal shares to such property of the same value. If the value of the exempt property selected in excess of any security interests therein is less than \$20,000, or if there is not \$20,000 worth of exempt property in the estate, the spouse or minor children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$20,000 value.

B. The right to exempt property and other assets of the estate needed to make up a deficiency of exempt property has priority over all claims against the estate, except the family allowance.

C. The right to exempt property is in addition to any benefit or share passing to the surviving spouse or minor children by the will of the decedent, by intestate succession, or by way of elective share. (1981, c. 580, § 64.1-151.2; 1990, c. 831; 1996, c. 549; 2001, c. 368; 2012, c. 614; 2014, c. 532.)

§ 64.3-311. Homestead allowance. (Replaced § 64.1-151.3 effective October 1, 2012.)

A. In addition to any other right or allowance under this article, a surviving spouse of a decedent who was domiciled in the Commonwealth is entitled to a homestead allowance of \$20,000. If there is no

surviving spouse, each minor child of the decedent is entitled to a homestead allowance amounting to \$20,000, divided by the number of minor children.

B. The homestead allowance has priority over all claims against the estate, except the family allowance and the right to exempt property.

C. The homestead allowance is in lieu of any share passing to the surviving spouse or minor children by the decedent's will or by intestate succession; provided, however, if the amount passing to the surviving spouse and minor children by the decedent's will or by intestate succession is less than \$20,000, then the surviving spouse or minor children are entitled to a homestead allowance in an amount that when added to the property passing to the surviving spouse and minor children by the decedent's will or by intestate succession, equals the sum of \$20,000.

D. If the surviving spouse claims and receives an elective share of the decedent's estate under §§ 64.2-302 through 64.2-307, the surviving spouse shall not have the benefit of any homestead allowance. If the surviving spouse claims and receives an elective share of the decedent's estate under Article 1.1 (§ 64.2-308.1 et seq.), the homestead allowance shall be in addition to any benefit or share passing to the surviving spouse by way of elective share. (1981, c. 580, § 64.1-151.3; 1990, c. 831; 2001, c. 368; 2012, c. 614; 2014, c. 532; 2016, cc. 187, 269; 2017, cc. 32, 82.)

§ 64.3-314. Waiver. (Replaced § 64.1-151.6 effective October 1, 2012.)

A. The right of a decedent's surviving spouse to a homestead allowance in the estate of a decedent as provided in § 64.2-311 may be waived during the decedent's lifetime only by execution of a marital or premarital agreement in accordance with Chapter 8 (§ 20-147 et seq.) of Title 20 or by execution of a waiver provided (i) the waiver is in writing, (ii) the language of the waiver mentions homestead allowance in conspicuous language, and (iii) the waiver has been signed by the surviving spouse.

B. The right to the family allowance and exempt property, as provided in §§ 64.2-309 and 64.2-310, may be waived during the decedent's lifetime only by execution of a marital or premarital agreement made in accordance with Chapter 8 (§ 20-147 et seq.) of Title 20. (1990, c. 831, § 64.1-151.6; 2012, c. 614.)