

Effective 5/9/2017

75-2-208 Exclusions, valuation, and overlapping application.

- (1) The value of any separate property of the decedent or the decedent's surviving spouse is excluded from the augmented estate even if it otherwise would be included in the augmented estate under Sections 75-2-204, 75-2-205, 75-2-206, and 75-2-207. Property is separate property if it was:
 - (a) owned at the date of the most recent marriage of the decedent and the decedent's surviving spouse;
 - (b) acquired by gift or disposition at death from a person other than the decedent or the decedent's surviving spouse;
 - (c) subject to a presently exercisable power of appointment not created by the decedent or the decedent's spouse that is exempt under Section 75-10-502;
 - (d) acquired in exchange for or with the proceeds of other separate property;
 - (e) designated as separate property by written waiver under Section 75-2-213; or
 - (f) acquired as a recovery for personal injury but only to the extent attributable to expenses paid or otherwise satisfied from separate property.
- (2) Income attributable to investment, rental, licensing or other use of separate property during the most recent marriage of the decedent and the decedent's surviving spouse is separate property.
- (3) Appreciation in the value of separate property during the most recent marriage of the decedent and the decedent's surviving spouse is separate property.
- (4) Except as provided in this Subsection (4), any increase in the value of separate property due to improvements to or the reduction in debt owed against separate property during the most recent marriage of the decedent and the decedent's surviving spouse is separate property. An amount equal to any payment for improvements to or the reduction in debt owed against separate property of the decedent made during the most recent marriage of the decedent and the decedent's surviving spouse from the joint or commingled funds of the decedent and the decedent's surviving spouse, or from the separate property of the surviving spouse, shall not be separate property to the extent of the amount actually paid for the improvements or the amount actually paid for the reduction in debt, including principal, interest, and other payments under the note, owed against separate property. The amount that is determined not to be separate property may not exceed the value of the separate property.
- (5) All property of the decedent or the decedent's surviving spouse, whether or not commingled, is rebuttably presumed not to be separate property.
- (6) The value of any property is excluded from the decedent's nonprobate transfers to others:
 - (a) to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property; or
 - (b) if the property was transferred with the written joinder of, or if the transfer was consented to in writing by, the surviving spouse.
- (7) The value of property:
 - (a) included in the augmented estate under Section 75-2-205, 75-2-206, or 75-2-207 is reduced in each category by enforceable claims against the included property; and
 - (b) includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal Social Security system.
- (8) In case of overlapping application to the same property of the section or subsections of Section 75-2-205, 75-2-206, or 75-2-207, the property is included in the augmented estate under the

provision yielding the greatest value, and under only one overlapping provision if they all yield the same value.

Amended by Chapter 125, 2017 General Session