

**75-2-404 Family allowance.**

- (1) In addition to the right to homestead allowance and exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having the child's care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims except the homestead allowance.
- (2) Unless otherwise provided by the will or governing instrument, the family allowance is chargeable against any benefit or share passing to the surviving spouse or minor children, by the will of the decedent, by intestate succession, by way of elective share, and by way of nonprobate transfers as defined in Sections 75-2-205 and 75-2-206. The death of any person entitled to family allowance terminates the right to allowances not yet paid.

Repealed and Re-enacted by Chapter 39, 1998 General Session