

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2025

Order Promulgating Amendments to Rule 13 of the Vermont Rules of Probate Procedure

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 13 of the Vermont Rules of Probate Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 13. ELECTIONS IN ESTATES RIGHTS AND ALLOWANCES FOR SURVIVING SPOUSE AND MINOR CHILDREN

(a) **Notice to surviving spouse.** Within 30 days after ~~an executor or administrator is appointed~~ the filing of the initial inventory, the court shall send by first class mail or otherwise ~~cause to be delivered~~ deliver to the surviving spouse a notice informing the surviving spouse of the following election and rights available as follows:

(1) ~~The election to waive the provisions made for the spouse in the will and to take a share of the decedent's estate pursuant to 14 V.S.A. § 319.~~ **Household goods and furnishings.** The right to request that household goods and furnishings be awarded to the surviving spouse pursuant to 14 V.S.A. § 312, which right may be exercised at any time prior to the issuance of a decree distributing any such furnishings and furniture.

(2) ~~The right to have the homestead set out pursuant to 27 V.S.A. § 105.~~ **Support and maintenance.** The right to request an allowance for support and maintenance of the surviving spouse pursuant to 14 V.S.A. § 316, which right may be exercised at any time prior to the issuance of a final decree of distribution provided, however, if the estate is insolvent, the allowance cannot continue for more than eight months after the letters of administration have been granted.

(3) ~~The right to request that household goods and furnishings be awarded to the surviving spouse pursuant to 14 V.S.A. § 312.~~ **Waiver of provisions in will.** The election to waive the provisions made for the spouse in the will and to take a share of the decedent's estate pursuant to 14 V.S.A. § 319, which right may only be exercised within the four months following the later of the date of the service of the notice or the date of the service of the inventory.

(4) ~~The right to request an allowance for maintenance of the surviving spouse and minor children, or either, pursuant to 14 V.S.A. § 316-318.~~ **Homestead.** The right to have the

homestead set out pursuant to 27 V.S.A. § 105, which right may be exercised within four months following the later of the date of service of the notice of election and rights or the date of the service of the inventory.

(b) **Initial exercise of Elections rights and allowances by the spouse.** Unless the time is extended by the court, the elections and rights specified in subdivisions (a)(1)-(2) shall be made or asserted within 8 months after the will is proved or letters of administration are granted. The elections shall be made on the official form contained in these rules. The court may schedule a hearing, on the motion of a party or on its own motion, to determine the validity of any request made pursuant to subdivision (a), and its effect on the distribution of the estate. Any party may appear at the hearing and contest the validity or effect of any such request. the surviving spouse shall file with the court the notice of exercise of election and rights as outlined in subdivision (a) and serve a copy of such notice upon the interested persons. If the surviving spouse fails to do so within the time frames outlined in paragraphs (a)(1)-(4), the failure(s) may be deemed by the court as a waiver.

(c) **Notice of rights to and exercise of rights by minor children.** Within 30 days from the date of filing of the initial inventory, the court shall send by first class mail or otherwise deliver to the court-appointed guardian or the surviving parent of any minor children, a notice informing the guardian or surviving parent of the following rights available to the children and the deadline for exercise of the rights:

(1) The right to request an allowance for support and maintenance of the minor children out of the personal property of the estate, the income from the personal property, and the income from the real property pursuant to 14 V.S.A. § 316, which right may be exercised at any time prior to the issuance of a final decree of distribution provided however, if the estate is insolvent, the allowance cannot continue for more than eight months after the letters of administration have been granted.

(2) The right to request an allowance for maintenance of the minor children until they reach the age of eighteen years, which allowance shall be made either before payment to creditors pursuant 14 V.S.A. § 317 or after payment to creditors pursuant to 14 V.S.A. § 318 but always before any distribution of the estate to heirs or beneficiaries by will.

(d) **Exercise of rights by minor children.** The guardian or surviving parent shall file the notice of exercise of rights with the court and serve a copy of the notice upon the interested persons.

(e) **Supplemental notice to and election by surviving spouse.** Within 30 days from the date of the filing of a supplemental or amended inventory, the court shall send by first class mail or otherwise deliver to the surviving spouse a notice informing the surviving spouse of the right given by 14 V.S.A. § 319(f) to waive the provisions in the will and to take a share in the previously omitted property or, if the property had been included in the prior inventory, in any

increase in the value of such property. Unless extended by the court, within 30 days of the date of service of the court’s notice, the surviving spouse may file a supplemental election with the court and serve a copy of the election upon the interested persons. If the surviving spouse fails to do so, the failure will be deemed as a waiver of said right.

(f) **Hearing on election.** Unless otherwise extended by the court, any interested party may request a hearing on the validity of any election within 30 days from the date of service of the notice of election upon said interested party. On its own initiative, the court may also schedule a hearing on the validity of any request within 30 days from the date of filing of the notice of election. If no request is filed, the election shall be deemed valid.

Reporter's Notes—2026 Amendment

The rule is re-organized to better reflect the statutory election rights and allowances available to a surviving spouse and minor children in accordance with the amendments made to the relevant statutes in 2017. The rights of the surviving spouse and any minor children are now addressed separately and timeframes for the exercise of the rights are identified.

As the homestead interest of the surviving spouse found in Title 27 differs from the election and rights of the surviving spouse found in Title 14, both the title of the rule and the delineation of the rule have been modified to reflect the distinction. The Vermont Supreme Court explained the purpose of the homestead interest, defined in 27 V.S.A. § 105, in *In re Cook’s Estate*, 117 Vt. 336, 91 A.2d 683 (1952). The dated nature of this 1952 decision is reflected in the presumption that the right exists to protect the surviving “wife.” *Id.* The *Cook* court determined that “[t]he wife’s right in the homestead premises is inchoate during the husband’s lifetime and ripens into an absolute right upon his decease. . . . It does not depend, however, on the contingency of being set out.” *Id.* at 340, 91 A.2d at 685. However, the statute directs the court “to set out the homestead.” 27 V.S.A. § 105.

Unlike the election and rights identified in subchapter 2 of Title 14, the homestead interest is not subject to a statutory deadline for its exercise. The homestead statute also does not provide for whether the right can be waived and does not address whether the surviving

spouse receives the value of any increased value in the homestead during the pendency of the estate. Waiver of the homestead right prior to the death of a spouse is addressed in 14 V.S.A. § 323. These omissions have the potential to cloud the title on the homestead and to delay the efficient and orderly administration of the estate.

Consequently, the rule now requires the spouse to exercise the right “within four months following the later of the date of service of the notice of election and rights or the date of service of the inventory.” In the absence of legislative changes to the homestead provisions, this timeframe will provide clarity and consistency.

2. That this rule is prescribed and promulgated effective _____. The Reporter’s Notes are advisory.

3. That the Chief Justice is authorized to report this rule to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this ____ day of _____, 2025.

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice