

# VIRGINIA ACTS OF ASSEMBLY -- 2017 SESSION

## CHAPTER 82

*An Act to amend and reenact § 64.2-311 of the Code of Virginia, relating to surviving spouse's elective share; homestead allowance benefit; emergency.*

[S 1177]

Approved February 20, 2017

**Be it enacted by the General Assembly of Virginia:**

**1. That § 64.2-311 of the Code of Virginia is amended and reenacted as follows:**

**§ 64.2-311. Homestead allowance.**

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 ~~or Article 1.1 (§ 64.2-308.1 et seq.)~~, as applicable, 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.*

**2. That the provisions of this act apply to the elective share of a surviving spouse of a decedent dying on or after January 1, 2017.**

**3. That an emergency exists and this act is in force from its passage.**