

**§2-208. Exclusions, valuation and overlapping application**

**1. Exclusions.** 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 [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If the property was transferred with the written joinder of, or if the transfer was consented to in writing before or after the transfer by, the surviving spouse. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

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**2. Valuation.** The value of property is determined as follows.

A. The value of property included in the augmented estate under section 2-205, 2-206 or 2-207 is reduced in each category by enforceable claims against the included property. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The value of property includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, except as provided in paragraph C, 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. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The value of a surviving spouse's beneficial interest in a trust from which distributions of both income and principal to the surviving spouse are subject to the trustee's discretion, regardless of whether that discretion is expressed in the form of a standard of distribution, is presumed to be 1/2 of the total value of the trust estate unless a different value is established by proof; except that the value of a surviving spouse's beneficial interest in a trust from which distributions of both income and principal to the surviving spouse are subject to the trustee's discretion, without an ascertainable standard, is presumed to be the full value of the trust estate if the spouse is the sole trustee of the trust. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

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**3. Overlapping application; no double exclusion.** In case of overlapping application to the same property of the provisions of section 2-205, 2-206 or 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.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

**SECTION HISTORY**

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

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