

**525.528 FEDERAL ESTATE TAX; MARITAL DEDUCTION.**

Whenever the decedent leaves a surviving spouse or by law the spouse is presumed to have survived and the representative of the decedent's estate, and the decedent's trustee or any other fiduciary is permitted or required to exercise a discretion, even though stated as sole, absolute or uncontrolled, to select assets in kind at values other than their values at the date or dates of distribution thereof, including values to be determined in the discretion of the representative, trustee or other fiduciary and even though such discretion is stated as sole, absolute or uncontrolled, to satisfy a bequest or transfer within the meaning of the marital deduction provisions of section 2056 of the United States Internal Revenue Code or such cognate provisions of federal law as may hereafter be applicable, such representative, trustee or other fiduciary shall be subject to the general fiduciary obligation of fairness and pursuant thereto shall select assets fairly representative of appreciation or depreciation in the value of all property available on the date or dates of distribution for selection and distribution in satisfaction of such bequest or transfer, unless other language of the will or trust instrument expressly refers to this section and states that it shall not be applicable. This section shall apply to the estates of decedents dying after May 26, 1965, to trusts created after May 26, 1965, and to trusts, whenever created, which are revocable after May 26, 1965.

**History:** *1965 c 765 s 1*