

## Can My Children Claim an Inheritance While I'm Still Living?

While they may not say it directly, children and grandchildren have been known to ask whether they can claim their inheritance in advance. They also express anger about their “inheritance” being spent or given to others. Even those who are not family members make plans and develop expectations about what they have been promised in a will or other estate plans.

So, can they act on that expectation? Can someone claim their inheritance early? Or can they take out a loan based on what they expect to inherit? The answers surprise many people.

## Wills Have No Effect During the Creator's Lifetime

In a will, you specify your instructions for how you want your estate to be handled when you pass away. You can choose someone to administer your final affairs, specify who should receive your estate, and nominate a guardian for minor children. You can leave instructions for your funeral.

However, as long as you remain legally competent, you can cancel the terms in your will. You can create a new will with entirely different provisions. Or you can leave matters up to the Texas laws of intestate succession. The bottom line is that your will has no effect until you pass away and the document is admitted to probate. The will may specify that your nephew will receive your car, but you have the legal right to change your mind about that. So your nephew has no claim on your car or anything else mentioned in your will until after your death when the executor distributes it through probate.

## Trust Beneficiaries Have Limited Rights

If someone has been named the beneficiary of a trust, they understandably have expectations about receiving property. However, the property belongs to the trust, not to them, and it can only be distributed in accordance with the terms of the trust.

If you set up a revocable living trust with yourself as the primary beneficiary and trustee and family members as successor beneficiaries, those family members do not have the right to any of the property in your trust until you pass away. You can revoke or change your trust at any time.

When property has been transferred to an irrevocable trust, the beneficiary has a definite expectation of receiving trust property, but they still cannot just claim that property outright. The property belongs to the trust. A lender might accept the beneficiary's interest as security for a loan, but they cannot attach the property. They can only make a claim on the distributions to the beneficiary.

## Inheritance Can Be Complicated, Particularly with Respect to Community Property

While someone cannot claim their expected inheritance of your separate property during your lifetime, the situation could be different for community property. If your spouse passes away, the property you owned together is often community property, and other individuals could be entitled to a share of that community property, depending on the situation.

If you have questions or concerns about inheritance rights or planning for the future,

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the team at The Nordhaus Firm would be happy to assist. Just schedule a free consultation at your convenience.