

## If You Don't Have a Will, Does Your Spouse Automatically Get Everything?

People often think they can simplify their affairs and avoid probate by not creating a will. They erroneously assume that their property will go where they want it to automatically, so there's no need for the legal fuss. However, the lack of legal planning can cause problems, particularly for husbands and wives who believed they were positioned comfortably and suddenly find themselves having to make some painful adjustments.

In Texas, when you pass away without a will or other estate plans in place, your spouse does not automatically inherit everything. And that can be a problem.

## When You Leave Property But No Plans

You have a few different options when it comes to passing your property on to other people. You can give gifts that take effect while you're alive. For instance, you can create a new deed for your house or a title for your car, adding someone else's name to the ownership. Then, when you pass away, assuming you either removed your own name or included a right of survivorship, the property belongs to the person you added as an owner.

The simplest option is to create a will designating who you want to receive your property after your death. If you want to make things easier for loved ones and save them the hassle of probate, you can set up a revocable living trust which allows property to pass to beneficiaries after your death without the need to comply with probate requirements.

If you do nothing or you tell someone that you want them to have certain property when you're gone, then your wishes have no legal effect whatsoever. Instead, the Texas laws of intestate succession determine who will receive your property. And it's not necessarily your spouse, even though Texas is a community property state.

## Community Property and Separate Property

Because of the Texas community property laws, when someone passes away while married, it is necessary to consider two different sets of property, referred to as estates. There is the deceased person's individual separate estate and the community estate.

When a marriage is lengthy, the community estate probably contains the most property. It consists of most assets acquired or earned during the course of the marriage. Community property belongs equally to both spouses even if one spouse made the purchase or earned the income.

The personal estate is property the deceased person owned before they got married or property they inherited or were awarded in a personal injury claim. Even if they received property of this type while married, it belongs to them individually and is classified as separate rather than community property.

There are different procedures for dividing community property and separate property under the laws of intestate succession in Texas. The law also treats real estate differently than other types of property.

## What a Spouse Receives in Texas Under the Laws of Intestate Succession

When someone dies intestate and leaves a husband or wife still living, Texas law specifies that if the spouse will receive all the deceased person's share of community property if and only if any children of the deceased person are also children of the

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surviving spouse. In other words, if the deceased person had children from another relationship and those children (or their children) are still living, then the husband or wife is not going to get any of their spouse's share of the house or whatever other community property they owned together. Instead, the deceased person's half of the community property will go to his or her children. A surviving spouse could be forced to share the marital home to provide children their share of the community property.

The treatment of separate property is similarly challenging. The children or grandchildren (or great-grandchildren) of the deceased person receive 2/3 of the deceased person's property other than real estate, and the spouse receives the other 1/3 of that separate property. With regard to any real estate owned by the deceased person as separate property, such as an inheritance, the surviving spouse gets a 1/3 life estate in the property, and the remainder is shared among the children. The life estate lasts only until the spouse passes away, and the children own the property outright.

Even if the deceased person left no children or other descendants, their surviving spouse still may not receive everything. Any real estate owned by the deceased person as separate property would be shared between the spouse and parents or siblings. Unless you have no close family left, the only way to guarantee that your spouse will receive everything when you pass away is to set up an estate plan that leaves all your property to your husband or wife through a will or other means.

## The Nordhaus Firm Can Put You in Control of Your Legacy

If you want to ensure that loved ones are cared for when you're gone, The Nordhaus

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Firm can help. We can develop a plan to suit your needs—whether either simple or complex—so that you, rather than the government, will decide what happens to your property.

You can schedule a free consultation to discuss your options and get started with the right plan of protection. Just call us at 214-726-1450 or contact us online today.