Many people wrongly assume they don't need to worry about what happens to their house or other property when their spouse passes away, and so they don't give the matter any thought until later when problems arise. The unfortunate fact is that even while you're mourning the loss of your partner and trying to adjust to the vast emptiness in your life, you still need to pay attention to some basic property issues in order to protect yourself.

The process can be much easier to endure when you work with a sympathetic, dedicated probate attorney who can guide you through the necessary steps and help you make informed decisions about how to move forward in the way that makes the most sense for your situation. Here we provide an overview of Texas community property laws, inheritance rights, the probate process, and how you can get through all of it with your peace of mind intact.

What Happens to Property When a Spouse Dies in Texas?

Texas divides property into categories. Assets may be treated differently depending on whether they are real estate or personal property and whether they are classified as marital community property or separate property.

Real vs. Personal Property

This distinction is simple. Real property is real estate. This includes land with buildings as well as completely empty land. Texas law recognizes a life estate in real property, where ownership is split. One person owns the land for the remainder of their life, and the remainderman owns it after that. Sometimes, when a married person dies, their spouse inherits a life interest in the property, and someone else receives the remainder. That means the spouse cannot easily sell the property or give it to anyone other than the person who holds the remainder. This ownership concept can take many people by surprise.

Personal property is everything that is not real estate or something connected to real estate. The distinction is usually clear, but when items are installed in a home,

it can be hard to tell whether they are part of the real property or personal property. For instance, a doorbell with a security camera is wired to a building and could be considered a fixture of the real estate, but it could also be moved and treated as personal property.

Community vs. Separate Property

When someone gets married, property they acquire after the start of the marriage is usually treated as marital property that belongs to both spouses. In Texas, marital property is shared equally, and it is referred to as community property.

Wages one spouse earned before the marriage are their separate property, but wages earned after the wedding belong equally to both spouses, even if only one spouse earned them. If one spouse buys a car and only puts their name on the title, it still belongs equally to both spouses as community property.

Generally, the only exception to the rule that property acquired during the marriage is jointly owned is property inherited or received as a gift by one spouse only. The recipient owns that as separate property. However, if they commingle it with marital property, it could be treated as marital property.

For instance, if a husband inherited money from an aunt, that would be his separate property. But if he put it in the couple's joint checking account and used it to pay the mortgage on the family home, it would likely be treated as marital community property.

Why Do the Classifications Matter?

The classification of property as real or personal and separate or community matters tremendously if a spouse passes away with a will or other estate plans in place. If plans for property transfer have not been prepared, then the Texas laws of intestate succession will determine what happens to the property, and these laws treat property differently depending on how it is classified.

Does a Surviving Spouse Automatically Inherit Everything in Texas?

You do not automatically inherit everything when your spouse passes away in Texas. Your spouse's will, trust, or other plans may specify what you will receive as the surviving spouse. If no legally enforceable plans are in place, Texas intestate succession laws will make that determination.

Here's an overview of distribution under intestate succession laws in our state:

- If the deceased person left no children or grandchildren, then the surviving spouse inherits all community property. The spouse receives all separate personal property but only one-half of the real estate considered separate property. The other half of that real estate goes to the deceased spouse's parents and siblings.
- If the deceased person and the spouse had children together, those children or grandchildren receive 2/3 of the deceased person's separate personal property. The spouse receives 1/3 of the separate personal property and all of the community property. With regard to separate real estate, the spouse receives a life estate in 1/3 of the land, and the children or grandchildren receive the other 2/3 of the life interest. In addition, the children and grandchildren inherit the remainder after the life estate ends.
- If the deceased person had children from another relationship, then the spouse gets only half of the community property while the other half is divided among the children and grandchildren. Separate property is divided the same way as it would be if all the children and grandchildren were descended from the current spouse.

This complex division often surprises people and can cause serious problems. However, these problems can be avoided by planning ahead with a will or other estate planning strategies, such as beneficiary clauses or retitling property.

What Happens to Your House After Your Spouse Dies?

Even if a deceased spouse owned the family home as separate property that is set to belong to another person when that spouse passes away, the surviving spouse has the right to continue to occupy the property under Texas homestead laws. The right to occupy property is not the same as ownership.

As noted above, the right to own the house could belong solely to the spouse, or the ownership could be split among several people. If the house was owned and maintained as the deceased spouse's separate property, the surviving spouse may have no ownership rights.

An attorney can help everyone understand their rights and obligations in this situation. It will be necessary to have the deceased person's name removed from the mortgage, tax records, and insurance, and all of these obligations will still need to be met even while the estate is still being settled.

What Steps Should You Take to Manage Property and the Estate?

Even though a spouse is the closest legal relation and may be named as the executor in the deceased person's will, that spouse should not assume they have the right to sell or transfer assets. Rights vary based on arrangements made before death, and those arrangements may take some investigation to uncover.

If your spouse has passed away, it is a good idea to:

- Locate all important documents and keep them together. This includes the will, property deeds, marriage license, insurance policies, financial statements, and copies of the death certificate.
- Contact all companies you have accounts with to learn their procedures and what beneficiary or survivorship plans are in place. For instance, a bank account may have a payable-on-death clause that transfers assets directly to a

named individual. Those assets do not become part of the estate and do not need to go through probate.
- Create an inventory of all debts and all assets. Note assets that will pass directly and not become part of the estate.
- Based on the assets that are in the estate, determine whether it will be necessary to go through the formal probate process

Before distributing any property, make sure you have the legal right to do so. Distributing property too early could leave you subject to liability from creditors or other heirs

FAQs About Texas Property Laws for Spouses

Do I need a lawyer when my spouse dies in Texas?

Legal representation is only mandatory when probate is required, but an experienced attorney can provide critical guidance and advice even if formal probate is not necessary.

Can I access my deceased spouse’s bank account?

That depends on the bank’s requirements, how the account is titled, and whether any survivorship provisions were created.

Does a wife automatically inherit her husband’s property in Texas?

No, inheritance depends on several factors. While a spouse has homestead rights and rights to a certain amount of community and separate property, the extent of those rights can vary depending on the situation.

If Your Spouse Has Passed Away, the Nordhaus

Firm Can Provide the Compassionate Guidance You Need

When a family member passes away, both the government and individual corporations require you to take many confusing steps at a time when you are overwhelmed by grief and loss. It can be difficult to know what to do, especially when you don’t want to do any of it.

Guidance from an experienced probate attorney can be a lifeline, even if full probate isn’t necessary. At the Nordhaus Firm, we offer free consultations so you can learn about what you need to do and how to protect yourself at every stage of life. Whether you are planning ahead or dealing with a loss now, we invite you to schedule a consultation with us. To get started, call us at 214-726-1450 or contact us online now.