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Inheritance Law and Your Rights

Inheritance law governs the rights of a decedent's survivors to inherit property. Depending on the type of inheritance law your state has, a surviving spouse may be able to claim an inheritance despite what you may have written into your will. This statutory right of a surviving spouse hinges on whether a state follows the community property or common law approach to spousal inheritance. Children, and sometimes grandchildren, also have a right to claim an inheritance when a parent or grandparent dies.

Inheritance Rights of a Surviving Spouse

Whether a state follows community property laws or common law determines how inheritance law affects the distribution of a married decedent's estate. The following are community property states: Arizona, California, Idaho, Nevada, New Mexico, Texas, Washington, Wisconsin, and Alaska (although in Alaska, there must be a written agreement between the spouses). The remaining states follow common law.

Inheritance Law in Community Property States

Community property is generally property acquired by either spouse during the marriage. This includes income received from work, property bought during the marriage with income from employment, and separate property that a spouse gives to the community. A spouse retains a separate interest in property acquired through the following methods:

- Inheritance or a gift
- Acquisition of the property prior to the marriage
- An agreement between the spouses to keep the property separate from the marriage community

In a community property state, each spouse owns a one-half interest of the marital property. Spouses have the right to dispose of their share of the community property in whatever way desired. A deceased spouse, for instance, can elect to give his or her half of the community property to someone other than the surviving spouse. Spouses cannot give away the other spouse's share of the community property, however. A provision in a prenuptial agreement may also change a spouse's right to distribute the property.

A spouse has the sole right to dispose of their separate property. A deceased spouse can distribute both their separate property and their share of the community property in a will.

Inheritance Law in Common Law States

Unlike a surviving spouse in a community property state, a spouse is not entitled to a one-half interest in all property acquired during the marriage. In a common law state, both spouses do not necessarily own the property acquired during marriage. Ownership is determined by the name on the title or by ascertaining which spouses' income purchased the property if a title is irrelevant. If, for example, only one spouse takes the title to a property, the spouse with the name on the deed owns the house even if the other spouse actually paid for it.

A surviving spouse in a common law state has protection from complete disinheritance, however. Every common law state has different guidelines, but most common law states' inheritance law allows the surviving spouse to claim one-third of the deceased spouse's property. A deceased spouse can choose to leave less than a state's mandated inheritance right, but the surviving spouse may make a claim with the court to inherit the predetermined amount. The will is carried out according to the decedent's wishes if the surviving spouse agreed in writing to accept less than the statutory amount or the surviving spouse never goes to court to claim the legal share.

Inheritance Rights of a Spouse after Divorce

Once a divorce becomes final, many states automatically revoke gifts made in the will to the ex-spouse. In other states, a divorce has no effect on gifts to the ex-spouse. It is best to create a new will after a divorce becomes final to prevent an

unintentional gift to a former spouse.

Inheritance Rights of Children

Unlike a spouse, a child generally has no legally protected right to inherit a deceased parent's property. The law does protect children when an unintentional omission in a will occurs, however. The law presumes that such omissions are accidental -- especially when the birth of the child occurred after the creation of the will. Depending on whether a spouse survives the decedent, the omitted child may inherit some portion of the deceased parent's estate. If the omission was intentional, though, the will should expressly state this.

Inheritance Rights of Grandchildren

In general, grandchildren do not have a legal right to inherit property from a grandparent. In some states, if the parent of the grandchild is deceased, however, the grandchild may have a statutory right to inherit property from a grandparent if the will does not contain an express statement of the intent to disinherit the grandchild.

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