



## Andrea L. Jakob, PA

*Legal knowledge, human wisdom: Helping you plan today, so you can sleep better tonight.*

# Your Estate Planning Team

## Surprise! You Cannot Easily Disinherit Your Spouse

Believe it or not, it is not easy to disinherit your spouse in the United States. In many states and the District of Columbia, you cannot intentionally disinherit your spouse unless your spouse agrees to receive nothing from your estate in a prenuptial, postnuptial, or other marital agreement. However, the same is not true for other family members. Generally, you can use your estate plan to disinherit your siblings, nieces and nephews, grandchildren, and sometimes even your children.

### Beware: Spousal Disinheritance Laws Vary Widely by State

Unfortunately, no one set of rules governs what a surviving spouse is entitled to inherit. Instead, the laws governing spousal inheritance rights, such as elective share and community property laws, depend on the state where you live or own property, and they vary widely. Based on state laws, the surviving spouse's right to inherit may be based on one or more of the following factors:

- how long the couple was married
- whether or not children were born of the marriage
- the value of what the deceased spouse solely owned
- whether the surviving spouse inherited anything from the deceased spouse outside of probate court (e.g., as a designated beneficiary or joint owner)
- the combined value of an augmented estate, which includes accounts and property that are subject to probate and accounts or property that were automatically transferred to a named beneficiary by operation of law (payable-on-death, transfer-on-death, or beneficiary designation form)

In Florida, a surviving spouse may choose to take an elective share, which is 30 percent of the deceased spouse's elective estate. The elective estate includes probate assets and certain nonprobate assets, such as payable-on-death and transfer-on-death accounts, joint accounts, revocable trust assets, the net cash surrender value of life insurance, annuities, and retirement accounts. The decedent's debts reduce the elective estate.

In addition, state laws vary widely regarding the time limit within which a surviving spouse can seek their inheritance rights, which can range from a few months to a few years.

### Disinherited Spouses Need to Act Quickly

If your deceased spouse has attempted to disinherit you, seek legal advice as soon as possible before state law bars you from enforcing your rights. Only an experienced estate administration attorney can help you weigh all your options and protect your interests as a surviving spouse.



## Put Us to Work For You

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