

It Takes Work To Disinherit a Spouse

The goal for some in a marriage is to make sure that the person they marry gets no inheritance from them when they die. This goal may seem harsh at first glance, but there may be good motivations behind it such as already having kids from previous marriage, a significant age difference in spouses, or wanting to give everything to charity. Whatever the reason it takes work to leave a spouse with nothing in most states and cannot be done with a simple will.

If you live in one of the community property states, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin, there is little that can be done to disinherit someone you are married to. In these states the spouse will most likely receive half of the estate regardless. If you live in one of the forty other states you can disinherit, but it will take some work. In most states you may disinherit your children or other family members very easily by just making a simple will, but your spouse is a different story. In these states just because you name your spouse in a will and do not leave the spouse anything or set up a revocable living trust and leave the spouse out of it does not necessarily mean the spouse will not get any of the estate. In most states there is a statutory elective share that allows the spouse to claim a percentage of the probate estate and maybe even assets in a revocable living trust.

The elective share is not mandatory and must be elected by the spouse after the last of eight months after death of the spouse or six months after probate of the will occurs. One way to make sure the elective share is not taken is to enter into a prenuptial agreement before the marriage or a postnuptial agreement after the marriage. A valid agreement by a spouse represented by an attorney is one of the only ways an elective share can be waived. This means that the spouse that would have a right to make the elective share must voluntarily give up this right as an informed choice made with help from an attorney. While this may seem like a lot of work to achieve such a simple goal, it is necessary to overcome the presumption and public policy that spouses should be provided for by an estate of the deceased spouse.

Evan Guthrie Law Firm is licensed to practice law throughout the state of South Carolina. The Evan Guthrie Law Firm practices in the areas of estate planning probate personal injury and divorce and family law. For further information visit his website at <http://www.ekglaw.com>. Evan Guthrie Law Firm 164 Market Street Suite 362 Charleston SC 29401 843-926-3813