

Can I Disinherit My Spouse?

When someone dies without a will, the laws of intestate succession determine how his or her estate is divided among eligible beneficiaries. These laws vary by state but typically prioritize the deceased's surviving spouse, children, parents, and siblings, in that order. If you disagree with how the state will distribute certain assets upon your death, you can create a comprehensive will and estate plan to maintain control.

In Indiana, you generally cannot disinherit your spouse. This means regardless of the terms of your will, your husband or wife will likely be entitled to a portion of your probate estate. First spouses are entitled to receive one half of the net probate estate (both real property and personal property). Second or subsequent spouses who did not have children with the deceased can collect 50% of the personal property and 25% of the net value of the real estate.

However, there are scenarios where your spouse may agree to be excluded from the will—or where you have a right to bar him or her from receiving anything once you pass. Read on to learn more about disinheriting a spouse in Indiana:

1. Giving Your Spouse a Small Portion of the Estate Won't Work

Some people assume their spouse is only entitled to half the estate if they leave him or her out of the will. Or, they attempt to get around disinheritance laws by including their spouse in the will but only giving him or her a fraction of what the state would have.

However, this strategy does not work. Your spouse is entitled to a stated portion of your estate no matter what you specify in your will. This is because the law gives spouses a statutory elective share, which prevents you from disinheriting your spouse. If you bequeath less than the allotted amount to your husband or wife, he or she may renounce the inheritance in favor of the statutory elective share.

2. You Can Keep Control If Your Spouse Is in Agreement

There are scenarios where happily married couples may wish to leave each other out of their wills. For example, perhaps you have children from a previous marriage and wish to leave them everything. Or, maybe you're planning to provide for your husband or wife in another way should you pass before him or her. You may be able to do so as long as your spouse is on board.

In Indiana, married individuals may waive their right to the elective share to avoid interrupting the agreed-upon inheritance plans. If you and your partner settle on this arrangement, you can have your spouse sign a waiver before you pass so you can include it in your will and estate plans.

3. There Are Exceptions to the Elective Share Statute

At least two other scenarios exist where an individual cannot inherit anything after his or her spouse passes. The first deals with abandonment. Those who leave their families without cause are not entitled to a portion of their husband or wife's estate.

The second exception pertains to assets. Spouses are only entitled to a portion of the probate estate. Therefore, if you do not leave anything that has to pass through probate, your husband or wife will not receive anything.

Call xxx-xxx-xxxx to Discuss Your Case with a Lafayette Estate Planning Attorney

Our attorneys are well-versed in estate planning's case law, statutes, and procedures. When you're ready to discuss your situation and begin the process of protecting your loved ones, call xxx-xxx-xxxx or use our [online contact form](#) to set up a consultation with an [estate planning lawyer in Lafayette](#).

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