

Disinheriting a Relative Can Be Complicated

You may feel that you have given one child more during your life, so he or she should get less in your will. Or you may want to cut out an heir altogether. Whatever the reason, disinheriting a close relative -- especially a spouse or a child -- can be complicated.

It may not be possible to completely disinherit a spouse. Even if you don't leave your spouse anything in your will, Mississippi has laws that keep a spouse from losing everything. Mississippi's "renunciation" law provides that, if you omit your spouse from your will, the spouse can renounce your will at your death and receive an equal share with your children. However, if the surviving spouse has a separate estate of his or her own that is equal to the share he or she would receive, the renunciation may not be allowed.

If you and your spouse have acquired property while you lived in a "community property" state, your spouse already owns half the community property. Other states have laws that automatically entitle a spouse to portion of your estate.

Even if you don't completely disinherit your spouse, he or she can choose between taking what the will provides or taking what the law says a spouse should receive in any case (the "statutory share," usually one-third to one-half of the estate). The only solution may be to enter into an agreement with your spouse in which you each waive the right to receive anything from the other's estate. This would be called a "prenuptial" agreement if entered into before the marriage, or a "postnuptial" agreement if entered into during the marriage.

Disinheriting a child is a different story. In Mississippi, a child may be disinherited at will, and (contrary to popular agreement) there is no requirement to leave such a child anything. Louisiana is the only state that does not allow an adult child to be disinherited. While other states do not require that you leave anything to your adult children, there may be laws that protect minor children. For example, in Florida you are required to leave your house to either your spouse or a minor child, if they are living. In addition, there are often laws that protect children born after a will was written. To be safe, even if you are leaving a child nothing, you should specifically mention the child in the will. It may also help to state the reason the child is getting nothing or a reduced amount. If you don't mention a child at all, the state may conclude that you did not intentionally exclude the child.

Disinheriting a close relative can cause fights among family members. Squabbles over wills can drag on for years and prevent your heirs from receiving their inheritance, so if you are planning on disinheriting someone, it is important to take as many precautions as possible. For these and other estate planning matters, and for more information on how to prevent a will contest, contact us at 866-ELDERLAW or through our website, www.elderlawms.com.