



Organize, Communicate, Prepare

Case Study 4

The surviving spouse's share

Sarah and Joe have three children. Joe worries that his wife, Sarah, seemed too eager to honor his father's living will last year when his father had a heart attack. The more he thinks about it, the angrier he becomes. Will she be just as eager to honor his living will if she stands to inherit from him? He decides that he doesn't want her to inherit anything from him or his family at his death, and that everything should go to their children.

1. Assume that Joe and Sarah own their home as community property. If Joe's will leaves the home to their three children, and he dies before Sarah, the children will inherit the home.

- True
- False
- It depends

2. If Joe and Sarah own everything with a right of survivorship, Joe is wasting his time writing a will.

- True
- False

Assume Joe's father, Grandpa Dan, has passed away, and Joe has inherited his fortune outright. Joe's estate is now worth about \$5 million.

3. If Joe dies before he can write his will, Sarah will inherit:

- A. All of Joe's property.
- B. A portion of Joe's separate property and all of Joe's joint property.
- C. One third of Joe's property.
- D. One fourth of Joe's property.

4. Joe can disinherit Sarah by leaving her \$1 under his will.

- True
- False

5. The following options can be successful in disinheriting a spouse:

- A. Writing the spouse out of the will.
- B. Prenuptial agreement
- C. Post-nuptial agreement
- D. Failure of surviving spouse to claim elective share within time allowed.
- E. All of the above
- F. Answers B, C, and D

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6. Assume that Sarah convinces Joe of her undying love and devotion. Under his will, Joe can leave Sarah at most:
- A. All of his property
 - B. One half of Joe's property.
 - C. One third of Joe's property.
 - D. One fourth of Joe's property.
7. If Sarah inherits the maximum amount of property allowed by law under Joe's will, how much will be exempted from federal estate tax at Joe's death, if he dies in the year 2005? (Joe's gross estate is valued at \$5 million.)
- A. \$700,000
 - B. \$1 million
 - C. \$5 million
 - D. None of the above
8. If Sarah inherits the maximum amount of property allowed by law under Joe's will, she can skip most of the probate process in her state.
- True
 - False
9. Assume that Sarah inherits the maximum amount of property allowed by law under Joe's will, and by the year 2008, the value of her estate is \$10 million. Also assume that Sarah is seriously injured in a car accident in January 2008. She is diagnosed as being in a persistent vegetative state and could be kept alive by feeding tubes for years. Her living will states that she does not want to be kept alive by extraordinary means or by feeding tubes if she is diagnosed in this condition. In spite of the huge medical costs, her children will have financial motivation to keep her alive for several years.
- True
 - False

Adapted for use in the Legally Secure Your Financial Future program; prepared by [Carol A. Schwab, J.D., LL.M.](#), former professor and Extension Specialist, NC State University.

Reviewed and adapted for Idaho use by Boise attorney, Robert Aldridge, September 2004.

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Case Study 4
Answers

The surviving spouse's share

Sarah and Joe have three children. Joe worries that his wife, Sarah, seemed too eager to honor his father's living will last year when his father had a heart attack. The more he thinks about it, the angrier he becomes. Will she be just as eager to honor his living will if she stands to inherit from him? He decides that he doesn't want her to inherit anything from him or his family at his death, and that everything should go to their children.

The following answers are based upon North Dakota law as of January 2006. The laws in other states may be different. Laws are subject to change, so please ask your attorney for answers to specific questions.

1. Assume that Joe and Sarah own their home as community property. If Joe's will leaves the home to their three children, and he dies before Sarah, the children will inherit the home.

ND answer: It depends

One half of the house already belongs to Sarah. The other half may be subject to certain spousal elections by Sarah.

2. If Joe and Sarah own everything with a right of survivorship, Joe is wasting his time writing a will.

ND answer: False

Sometimes such survivorship accounts may be presumed to be in the estate, especially if it is not real estate.

3. If Joe dies before he can write his will, Sarah will inherit:

ND answer: B

A portion of Joe's separate property and all of Joe's joint property.

4. Joe can disinherit Sarah by leaving her \$1 under his will.

ND answer: False

5. The following options can be successful in disinheriting a spouse:

ND answer: E. Possibly all of the above.

6. Assume that Sarah convinces Joe of her undying love and devotion. Under his will, Joe can leave Sarah at most:

ND answer: A. All of his property.

7. If Sarah inherits the maximum amount of property allowed by law under Joe's will, how much will be exempted from federal estate tax at Joe's death, if he dies in the year 2006? (Joe's gross estate is valued at \$5 million.)

ND answer: C

\$5 million. There is currently an unlimited marital deduction, so all property passing to Sarah is free of tax.

8. If Sarah inherits the maximum amount of property allowed by law under Joe's will, she can skip most of the probate process in ND.

ND answer: False

Depending on nature of assets and value of estate.

9. Assume that Sarah inherits the maximum amount of property allowed by law under Joe's will, and by the year 2008, the value of her estate is \$10 million. Also assume that Sarah is seriously injured in a car accident in January 2008. She is diagnosed as being in a persistent vegetative state and could be kept alive by feeding tubes for years. Her living will states that she does not want to be kept alive by extraordinary means or by feeding tubes if she is diagnosed in this condition. In spite of the huge medical costs, her children will have financial motivation to keep her alive for several years.

ND answer: True

Related Case Studies

Case Study 1. When is it too soon to honor a living will? When does your health care agent have the authority to make your medical decisions?

*Adapted for use in the Legally Secure Your Financial Future program; prepared by Carol A. Schwab, J.D., LL.M., former professor and Extension Specialist, NC State University.
Reviewed for North Dakota use by Paul Murphy, Attorney at Law, Murphy and Spahr Law Office PC, Carrington, ND, January 2006.*

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