



## When a spouse passes away: mistakes and misconceptions

*The death of a spouse is an emotional and trying time. Added to this difficult time often is additional stress of not fully understanding what should or should not be done with your significant other's estate. One of the biggest misconceptions out there may be the belief that little needs to be done and most of the work occurs upon the eventual death of the surviving spouse.*

*Fortunately, with the proper planning in place, the "to-do list" potentially can be minimized. Still, it is often difficult to eliminate all issues and items that need to be addressed. In this report, we'll address some common misconceptions in this area and help identify mistakes you may want to avoid.*

### Believing you have a good handle on your spouse's assets

Typically, a surviving spouse will have extensive knowledge of the assets comprising the deceased spouse's estate. Most assets are often held jointly or at least known to the surviving spouse. But even with a good idea of which assets are where, it is rare that you will have an exhaustive list of all assets readily available when your spouse dies and there may be assets about which you're not aware. For example, your spouse may have owned a long-term investment that may have pre-dated your marriage; such assets may fall under "out of sight, out of mind." You may need assistance to not only ensure that all assets are properly identified, but also that such assets are properly transferred or distributed.

## Assuming there is no need to probate the will

Many people are often under the impression that there will be no need to probate the will upon the death of your spouse (assuming there is a will), especially if most of the assets are owned jointly. Although you may have owned property jointly, you may discover that some of your assets were owned individually, such as certain investments, or even tangible personal property, such as automobiles.

Many of us have the popular “I Love You” will, whereby individually owned assets are left to the surviving spouse and then, upon the death of the surviving spouse, to the designated beneficiaries (such as surviving children) per the terms of the surviving spouse’s will. Estate planning documents may utilize trusts for tax and other planning purposes (for example, setting up a revocable living trust and pour-over will with the intention of avoiding probate, or setting up a trust to control the flow of assets for a certain point of time post-death). However, in all the aforementioned situations, probate will be required if there are any individually held assets with no designated beneficiaries.

## Believing paperwork will be minimal

For most of us, “paperwork” is an ugly, nine-letter word. The paperwork needed to administer the estate of your spouse is generally less burdensome; however, the administration of a spouse’s estate can often be more time-consuming than you may have first thought. For example, there may be life insurance benefits to be paid or retirement accounts to be transferred. There may be a family business, closely held company, or rental property to deal with. Surprisingly, even something as relatively simple as the transfer of an automobile to a surviving spouse can be a bit of a hindrance.

## Assuming death taxes will not be an issue

With the unlimited marital exemption applicable to federal and state death taxes, the tax liability of the predeceased spouse’s estate is usually minimal; however, depending on the beneficiary designations, there may be federal and/or state filing requirements. Even with the IRS’s current lifetime gift and estate tax exemption, you may have a reason to file a federal estate tax return to claim portability (i.e., the ability to transfer the deceased spouse’s unused exemption amount for estate and gift taxes to a surviving spouse). In many instances, there will be no federal estate tax due, but there will be a state estate tax or, more likely, a state inheritance tax due on distributions to non-spouse beneficiaries.

## Not understanding the application of state laws

Estates are generally governed by state law. In addition to potential issues with state death taxes indicated above, there are several state-specific rules and procedures that are often overlooked. For example, there may be a duty to notify creditors of the decedent's passing. In addition, if your spouse died intestate (without a will), state law will govern the plan of distribution of the decedent's estate. You may be under the misconception that you will simply inherit everything if your spouse dies intestate. This may not be the case if there are children from a previous marriage involved (on either side).

Intestacy rules may also come into play if a will is deemed invalid for whatever reason and there is no former or pre-dated will to take its place. Depending on whether probate is required, there could be subsequent state filing requirements such as the filing of an estate inventory and/or the filing of refunding bonds and releases.

## Assuming post-mortem planning is not needed

Even with extensive estate planning in place, post-death planning opportunities may still exist upon the death of your spouse. This could take the form of both tax- and non tax-related planning ideas. One example is planning with reverse qualified terminable interest property (QTIP) elections to effectively allocate your spouse's generation-skipping transfer (GST) tax exemption. Another is planning by using disclaimers or disclaimer trusts, which also factors in tax-basis adjustment rules.

## Assuming "we're one big happy family"

Even when, as a surviving spouse, you are the executor and primary beneficiary, conflicts may exist if a family member, such as a surviving child, feels that mom or dad's estate is not being handled properly. This is more likely to be the case if the surviving spouse is elderly and relies heavily on the assistance of another family member.

Unfortunately, blended families or second marriages often add another layer of potential complications. Although not overly common, there are instances where a family member or interested party challenges the legal validity of the will (often through the theories of lack of capacity or undue influence).



## Navigating through this difficult time

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