

Don't Forget About the Elective Share

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Sometimes I meet with a client who explains for a variety of reasons that they want to not include their spouse as part of their estate plan. Typically, they want to update their Will but not any other documents. I usually explain to the client about something called the “elective share”. The elective share is a statute in Massachusetts that provides a surviving spouse with a minimum amount of a deceased spouse’s estate even if, as with this client, they intentionally leave their spouse nothing.

In Massachusetts, the elective share permits a surviving spouse to set aside their deceased spouse’s will and instead claim a statutorily-defined portion of the deceased spouse’s probate estate. Depending on the existence of descendants of either or both spouses, parents of the deceased, and/or other close family members, the surviving spouse may claim an amount ranging from one-third of the probate estate to \$25,000 plus one-half of the remaining estate.

While most people want to take care of their surviving spouse, there are situations where you might want to give the bulk of your assets to a different person.

If you are in a second marriage and want to take care of your children from a first marriage, for example. Or you have family assets that you want to go directly to your children.

Or perhaps your spouse is expecting a substantial inheritance of their own and you would rather leave assets to your children.

Whatever your reason, if you want to leave your spouse anything less than the spousal or elective share, you need to be aware of the rules and work with your estate planning attorney to make sure you can accomplish your goals. If you don't already have an estate planning attorney, be sure to seek the advice of a qualified estate planning attorney who can help you structure your estate plan to meet your goals, whatever they are.

Do you have a suggestion for a future article topic for Attorney Walecka? Reach out to him directly with a question or topic that you think would be helpful to readers.

The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.