

15 Benefits to Surviving Spouses in Texas

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15 BENEFITS TO SURVIVING SPOUSES IN TEXAS

Surviving spouses are entitled to numerous rights under federal and Texas laws. The following are just a few of the many that widows and widowers should be aware.

1. Homestead rights

Under the Texas Constitution, a surviving spouse is entitled to the exclusive right to occupy the homestead for his or her life even if the home is the separate property of the deceased spouse or gifted or bequeathed to someone else. The surviving spouse is required to pay the property taxes, mortgage interest (not mortgage principal) and maintain the home. A life estate is not full ownership interest – just the exclusive right to occupy the property as long as the surviving spouse fulfills his or her duties.

2. If the deceased spouse had children of a prior relationship and his or her will has a bequest of the home to the surviving spouse, the surviving spouse should probate the will

A will must get court approval for it to be effective. If a will bequests the home to the surviving spouse and the deceased spouse had children from a prior relationship, then the surviving spouse should probate the deceased spouse's will to have full ownership of the homestead - not just a life estate (the right to occupy the homestead).

3. Creditor Exemptions

A homestead is generally exempt (except from a lender in connection with purchasing or refinancing the property, tax liens, etc.) from the claims of creditors. As a result, the surviving spouse's interest in the home (even if only a life estate as set forth in 1 above) is protected from the claims of creditors. Also up to \$100,000 of personal property (home furnishings, heirlooms, food, farm or ranching vehicles, clothes, tools, books and equipment, boats and motor vehicles used in a business, two firearms, jewelry not to exceed \$25,000, athletic and sporting equipment, a two-wheeled, three-wheeled or four-wheeled motor vehicle for each family member, and certain animals such as cattle, livestock, fowls and household pets) is exempt from the claims of creditors. If the homestead is deeded into a revocable living trust then certain language is now required for the homestead to be protected from creditor claims.

4. Allowance in Lieu of Exempt Property or Homestead

If the estate does not include a homestead or it has little equity, the surviving spouse can request an allowance from the estate of up to \$45,000. The personal representative can use property devised to someone else (including beneficiary designations of bank accounts) to cover the allowance if the estate is insufficient.

5. Community Property

A surviving spouse owns ½ of the community interest of property acquired during marriage. Thus, even if an account is in the name of the deceased spouse only which was funded with the deceased spouse's earnings during marriage, it is still community property. Furthermore, if the community property has appreciated, the surviving spouse will get a "step up" (recalculation) in basis to the value of the property as of the date of death of the deceased spouse resulting in no capital gains.

6. Family Allowance

A surviving spouse may sometimes request a family allowance necessary for maintenance of the surviving spouse, decedent's minor and adult incapacitated children for 1 year after the date of the decedent's death provided the surviving spouse doesn't have adequate separate property or the children have property adequate for maintenance or the decedent wasn't providing for the adult incapacitated child at the time of decedent's death.

7. Avoidance of Successful Medicaid Estate Recovery Claim

If the decedent had interest in a home, car, life insurance, IRA or other resources and the government assists in the payment for long-term care costs (care in a nursing home or at home and drugs), a surviving spouse is an exclusion from a successful claim by the government (from Medicaid) for recovery of its claim for the benefits advanced.

8. Veteran's benefits

Under federal law, a surviving spouse of a U.S. veteran or service member may qualify for a multitude of benefits including, but not limited to: (1) help with burial costs; (2) health care; (3) help paying for school or job training; (4) career counseling; (5) survivor's pension if deceased spouse was a wartime veteran; (6) compensation for deceased spouse who died in the line of duty or from a service-related injury; (7) home loan programs or financial counseling; and (8) life insurance options, claims and beneficiary assistance.

9. Property Tax Benefit for Surviving Spouse of Disabled Veteran

The surviving spouse (if over 55) of a disabled veteran who had a 100% disability rating is entitled to a total elimination of property taxes. If the deceased spouse was a partially disabled veteran, then property taxes for the surviving spouse can be reduced by \$5000 to \$12,000 depending on the disability rating.

10. Surviving Spouse over 55 Continues to get Deceased Spouse's Over Age 65 Homestead Property Exemption

If the surviving spouse owns an interest in the homestead, continues to live in the home as his or her personal residence and was at least 55 years of age and if the deceased spouse was over age 65 getting the over age 65 homestead exemption, the surviving spouse will be entitled to the over age 65 homestead exemption.

11. Surviving Spouse Social Security Income Benefits

Although there are numerous rules regarding Social Security benefits, the general rule is the surviving spouse may be able to get full benefits (the higher of the deceased spouse or surviving spouse's Social Security monthly income) at the surviving spouse's full retirement age (65 for the widow or widower born before 1945, 66 for the surviving spouse born between 1945 and 1956 which gradually increases by month to age 67 for a surviving spouse born in 1962 or later). The surviving spouse can get a reduced benefit as early as age 60. If the surviving spouse has a disability, benefits can begin as early as age 50.

12. Social Security Benefits if Deceased Has a Child That is Either Under Age 16 or Disabled

The surviving spouse can get benefits at any age if they take care of the deceased spouse's child under age 16 or who is disabled and is receiving Social Security benefits.

13. One-Time Death Payment from Social Security

If the deceased spouse worked long enough, the surviving spouse is entitled to a one-time payment of \$255 if applied for within 2 years of the date of death.

14. Unlimited Marital Deduction

The surviving spouse is entitled to property of unlimited value from the deceased spouse without having to pay any estate tax. However, the surviving spouse with

a taxable estate (presently \$12,920,000 for those who die in year 2023, going up to \$13,610,000 in 2024) should consider various estate planning options to reduce estate taxes when the surviving spouse dies. If the combined assets are close to the estate tax limit, the surviving spouse might file an estate tax return if it is anticipated that the estate of the surviving spouse would be taxable at his or her death.

15. IRA Rollover

A surviving spouse can rollover inherited IRAs into their own IRA and make required distributions over his or her life expectancy for continued tax deferred growth. The surviving spouse can also deplete the IRA within 5 years or disclaim his or her interest.

If interested in learning more about this article or other estate planning, Medicaid and public benefits planning, probate, etc., attend one of our free upcoming Estate Planning Essentials workshops by clicking [here](#) or calling 214-720-0102. We make it simple to attend and it is without obligation.