



LEGAL BRIEF

DISINHERITING GUIDANCE

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PREPARED BY:
CREECH LEGAL OFFICE
Bldg 271, Perimeter Rd, Creech AFB, Nevada
Phone: 702-404-0881

Disinheriting someone means excluding them from your Last Will and Testament and preventing them from receiving your property or assets after you pass away. Disinheritance can cause extreme family tension. Before making the choice to disinherit a family member or relative in your Last Will, consider the consequences of your decision. In addition to the emotional effect of your passing, unexpected disinheritance details can be hurtful and disrupt the grieving process.

I. Consider Who You Can and Cannot Disinherit

Before deciding to exclude someone from your Will, you must learn the limitations of disinheritance. The restrictions will depend on your jurisdiction. Typically, there are restrictions for disinheriting spouses and children but not parents and extended relatives.

- **Can I disinherit a spouse?** In many states, you cannot completely disinherit a spouse from your will. Most states have "elective share" laws that allow a surviving spouse to claim a certain percentage of the deceased's estate, regardless of the will's contents. Prenuptial or postnuptial agreements can waive these rights.. If you haven't created a prenuptial agreement and attempt to disinherit a spouse in your Will, your local jurisdiction may override your wishes and give a portion of your estate to your spouse. For example: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin are considered community property states. In community property states, most assets acquired during the marriage are considered "community property" and are owned equally by both spouses. A deceased spouse can only dispose of their half of the community property in their will. The surviving spouse automatically retains their half.
- **Can I disinherit children?** While you can generally disinherit adult children, most states have laws preventing the complete disinheritance of minor children. These laws are in place to ensure minor children are financially supported.. The limitations of disinheriting children will depend on your jurisdiction. Adult children can contest a parent's Will if they are not included as a beneficiary.
- **Can I disinherit a parent?** Children may disinherit parents who outlive them. Parents are not legally entitled to any of their children's estate. If you are an adult with no children and you do not want a parent to receive a portion or all of your estate, excluding them from your Will is likely the best action.

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- **Can I disinherit extended relatives?** You are not obligated to give extended relatives any of your inheritance. Any individuals who are not legal beneficiaries and are not mentioned in your Will should not receive property to begin with. However, beneficiaries of a previous Will can sometimes contest a new Will if they have been excluded from an updated document.

II. Reasons for Disinheritance

It is important to know that you are not alone. Disinheritance is more common than you may think. Some people have their reasons, such as estrangement, lack of relationship, or distrust. Some common reasons for disinheritance are:

- You have an estranged relationship or minimal contact with heir
- You believe the heir has enough financial income and inheritance is unnecessary
- You feel the heir has not supported or cared for you in the past
- You have already provided past financial support to your child/beneficiary
- You don't believe that the heir is financially responsible
- You don't support the heir's lifestyle or behavior
- You accidentally disinherit someone (meaning you didn't update your Will)
- The potential heir has requested you do not give them inheritance (for tax purposes or other reasons)

What is accidental disinheritance? There are cases where individuals accidentally disinherit an heir by failing to update their Will after a major life event. For example, when one gives a particular assets to a beneficiary upon their death, but at the time of their death that asset no longer exist. If the beneficiary is not named elsewhere in the Will, then the beneficiary would have been accidentally disinherited. It is important to maintain and update your Will so you don't accidentally disinherit someone.

III. What Happens if the Disinherited Party Challenges Your Will?

There are times when a disinherited party may try to challenge a Will if they believe they were wrongly excluded as a result of a simple mistake, undue influence, fraud, or forgery. Generally, only "interested persons" can contest a will. To be considered an "interested person," an individual must have pecuniary (financial) interest that would be either improved if the will is overturned or harmed if it is upheld. Think of it this way: they must stand to either gain money or lose money based on the court's decision. This typically includes spouses, children, and any individual or entity named in the current or a previous will. The definition of an "interested person" can vary by state. They must also have valid legal grounds to contest.

You have the option to add a "No-Contest Clause" which will disinherit a beneficiary of your will if they unsuccessfully challenge the document's validity. In families where beneficiaries may cause conflict, adding in this clause may help dissuade unnecessary arguments. You can choose to disinherit someone directly in your Will without telling them, so they'll only be notified at the time of your passing. This will ensure they don't try to change your decision, while avoiding an often incredibly-awkward conversation. But if you go this route, you should be mindful of the language you use so the person is properly legally disinherited.

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If your Will is challenged, a court decides if the Will upholds the specific challenge. In these cases, those who were involved with the procurement of the Will might be asked to come to court. Other forms of verification, such as a signed self-proving affidavit declaring the Will was signed in front of witnesses, might protect them from coming into court. Your military lawyer drafting your last will and testament will notarize your documents for you, establishing the validity of your will.

IV. How to Avoid Conflict when Disinheriting Someone from Your Will

There are preventative measures you can take to keep family members and others from disputing your Will.

- **Establish a Living Trust:** Solidify your decision through a Living Trust. There are many types of Trusts you may want to consider, depending on your goals. Trusts can offer privacy, protection against estate taxes, avoidance of probate and much more. A significant advantage of a living trust is that it avoids probate, which is a public process. Because trusts are private documents, the details of your inheritance plan are not part of the public record, which can help minimize disputes. Probate is a public record, so anyone can access what you left to whom, which could fuel fire in terms of contesting. A Trust makes all inheritances private. Military legal offices are generally not equipped to create trusts, but can refer you to civilian practices in the local area.
- **Adding Beneficiaries to Accounts:** Adding a Beneficiary to specific types of accounts and assets is also a solid tactic. Naming Beneficiaries allows for private distribution of funds several types of accounts, including:
 - Individual Retirement Accounts (IRAs)
 - 401(k)s
 - Life insurance policies
 - Annuities
 - Transfer on Death (TOD) accounts

The distribution of these accounts will be known by only the Beneficiary and the IRS. If you are enrolled into the Thrift Savings Plan (TSP) or prior military retirement systems, you may designate beneficiaries within that savings program.

V. Update your Will with a Disinheritance Clause

After considering who you can legally disinherit and deciding that disinheritance is the correct decision, you can ensure that someone is removed as a beneficiary by updating or creating your Last Will and Testament. You may wish to include a reason in your Will. Understand that these words will be your last communication to this person.

It is important to make a Last Will as clear as possible, because this document is a personal statement that comes into effect after death. This means that once you pass away, there is no option to ask you for clarification. For this reason, declining to mention an heir entirely can leave a Will open to dispute.

To effectively disinherit someone, your will must contain clear and unambiguous language. For instance: "I intentionally make no provision in this will for my daughter, Ashley, and it is my express wish that she

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take no part of my estate." This explicit statement helps to prevent a court from concluding that the omission was accidental.

It's important to regularly update your Will throughout your life as your financial status and family change over time. At a minimum, you should update your Will after the following life events:

- Marriage
- Divorce
- Birth of a child
- Adoption
- Death of a spouse
- Death of executor or beneficiary
- Significant change in assets
- Starting a business
- Change of residence
- Significant health changes or diagnosis

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