



Ask the Advisors:

Is it possible to accidentally disinherit my heirs?

Yes. One of the most tragic estate planning mistakes is unintentionally disinheriting an heir. Here are some of the most common ways this unfortunate situation can occur.

One of the biggest causes of accidental disinheritance is the simplest: failure to make a will. In this case, property passes according to the intestacy laws of the state in which you're "domiciled."

Making an ineffective or faulty will can also result in misdirected allocations. For example, you may fail to provide for children born after you make your will (this is what happened to Anna Nicole Smith and Heath Ledger). The lesson here is to forgo the do-it-yourself kit and hire an experienced estate planning attorney to draft and execute your will, and review it every year or two.

Failing to update your will can result in allocations that are made according to an old will.

This can lead to unwanted allocations (for example, the disinheritance of children when Mom or Dad remarries and everything passes to the new spouse). Make it a rule to review and update your will periodically, especially after major life events such as marriage, a birth or adoption, divorce, or death. Also, update beneficiary designations (for life insurance policies, retirement accounts, payable on death accounts, etc.) annually. And, remember that beneficiary designations trump provisions made in your will.

A fourth cause of accidental disinheritance is what's known as ademption. This is the failure of a specific bequest made in a will because the property no longer exists in the decedent's estate for some reason. For example, you might leave your car to your son in your will, and then sell or gift it to someone else before you die. A similar situation can occur when a life insurance policy is allowed to lapse (so check that your elderly parents don't forget to make their premium payments).

How do I purposefully disinherit an heir?

While you can easily disinherit a nonheir by not mentioning him or her in your will, the rules are more complicated when it comes to your heirs. Merely not mentioning the name of a child or spouse in your will might not disinherit him or her, and doing so can even open the door for a will contest. In a will contest, the heir who is left out could argue that he or she was mistakenly overlooked. The outcome of a will contest depends in part upon your state's law regarding an omitted (referred to as "pretermitted") spouse or child.

To be sure that your intent to disinherit an heir is unequivocal, you should consider including a disinheritance clause in your will. Such a clause can discourage the disinherited heir from contesting your will. This clause would indicate the exact name of the heir you wish to disinherit, and explicitly state that the reason he or she is not included is because you wish to disinherit him or her.

Be aware that in most states, you cannot disinherit your spouse completely. If you live in a community property state, your spouse automatically owns one-half of the community property, which generally includes property that either of you acquired during your marriage. In all states, spouses are protected from disinheritance because they're allowed to claim a statutory share (also known as "electing against the will"). A statutory share can run anywhere from one-quarter to one-half of an estate, regardless of the terms of your will.

Also be aware that, while you have the right to disinherit a child, that right is restricted by laws that grant certain inheritance rights to minors, and protect children of any age from accidental disinheritance. You should consult an experienced estate planning attorney if you're considering disinheriting an heir.

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