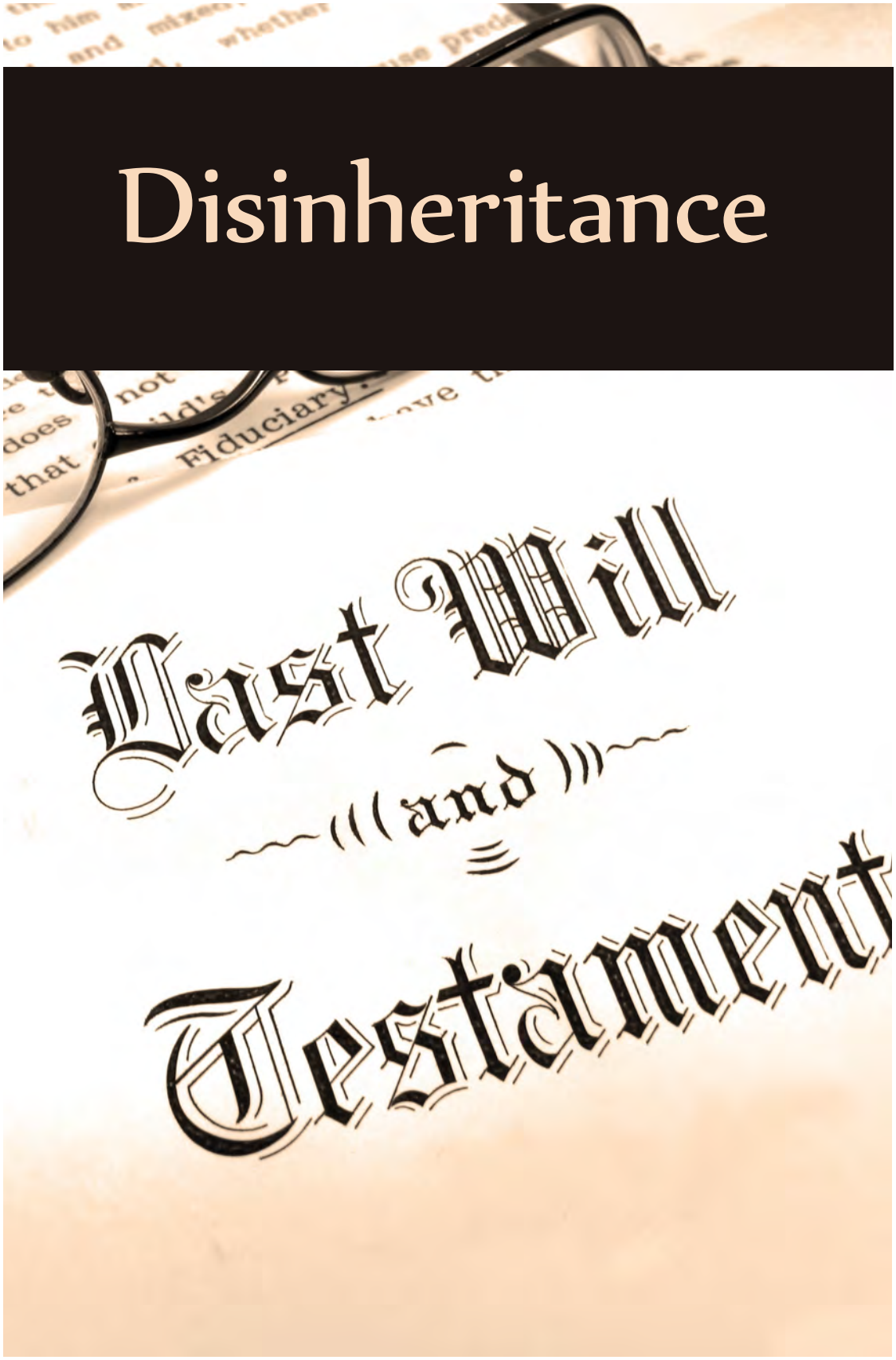
Disinheritance



Aaron J. Lyttle

University of Wyoming Extension

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Author:
Aaron J. Lyttle, *attorney with Long, Reimer, Winegar, Beppler, LLP Cheyenne, Wyoming*

University of Wyoming Extension Financial Literacy Issue Team:
Cole Ehmke
Mary Martin
Bill Taylor

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Inheritance

The Wyoming Probate Code provides the default manner in which property will pass from a deceased person (also known as a "decedent") to his or her surviving spouse and heirs. An "heir" is a person who may be entitled to receive the property of a person who dies without a "will." A "will" is a document that describes the wishes of a deceased person with respect to the distribution of his or her "estate" and other arrangements, including funeral arrangements. A person's "estate" consists of all property, possessions, belongings, and obligations held in that person's name at the time of death. Wyoming law describes a person who dies without having executed a valid will as having died "intestate."

Wyoming law provides a default pattern of inheritance for the property of decedents who die intestate.[1] After the estate has paid the decedent's debts and funeral and estate-administration expenses, the decedent's property typically passes to his or her surviving spouse or children, or his or her children's descendents, depending on who is living at the time of the decedent's death. If the decedent has a surviving spouse, but no surviving descendents, then the surviving spouse receives what remains of the decedent's estate. If the decedent has a surviving spouse and surviving descendents, then the surviving spouse will receive half of the deceased's estate and the surviving children (or their descendants) will receive the other half. If there are no surviving spouse or children, then other relatives may receive the deceased's estate, including parents, siblings, nieces, nephews, grandparents, uncles, aunts, and so on.

Wills and the Right to Disinherit

If a decedent has executed a valid will, then property will generally pass according to the instructions provided in the will, subject to the decedent's valid debts and final expenses. A person who has executed a valid will is known as a "testator." While a woman who executes a will has traditionally been referred to as a "testatrix," some people view such language as archaic and use the term "testator" to refer to persons of either sex. A person who is entitled to receive property under a will is known as a "distributee."

"Disinheritance" generally refers to the practice of drafting a will in a manner that prevents another person from becoming an heir or distributee of an estate. A testator is generally free to draft the terms of a will in the manner of his or her choosing.[2] This effectively allows decedents to draft their wills in a manner that disinherits possible heirs by depriving heirs of the share they would have received if the testator had died intestate. Typically, a testator disinherits an heir by intentionally excluding the person from the right to receive property under the testator's will. The testator will usually include language acknowledging the disinheritance of unnamed or specified individuals. It is common practice to list the names of a testator's spouse and children in order to clarify that the testator was aware of such persons' existence when drafting the will. The will may also provide the reason for the heir's disinheritance. It is often a good idea to expressly acknowledge the disinheritance in some fashion to clarify that someone was not mistakenly omitted from the terms of the will.

For example, a mother who is dissatisfied with the manner in which her son lives his life may expressly provide for distributions of her estate to her other children, but not to her son. In another example, a grandfather may provide that a granddaughter is not entitled to receive any of his estate because he has otherwise provided for her care during his life.

One approach to disinheritance is for the testator's will to provide for the distribution of a nominal sum to an heir, such as $1. Many clients mistakenly believe that this is necessary to disinherit an heir. You should carefully discuss with your attorney the advisability and possible drawbacks (such as increased notification duties) of leaving a nominal sum to an heir.

Disinheritance Through Trusts

Some people may elect to use a trust as the primary means of distributing their property after death. A "trust" is usually a legal agreement in which a person, known as the "settlor," appoints a certain individual or individuals, known as "trustees," to hold and distribute particular property for the benefit of specified third parties known as "beneficiaries." It is increasingly common for individuals to use revocable trusts as "will substitutes" in order to avoid costly probate proceedings. Such a person will typically transfer the bulk of his or her property to the trust during life and execute what is known as a "pour over will" to transfer any property remaining in his or her name to the trust at death.

Like wills, trusts can be used to disinherit heirs. In this situation, the settlor will simply not name specified individuals as beneficiaries of the trust. The trust may also describe the reasons for not naming a specified individual as a beneficiary.

No Contest Clauses

Litigation can result from situations in which it is unclear which heirs or distributees are entitled to receive the decedent's estate. There may be questions about the proper interpretation of a will or whether it is even valid in the first place. Such challenges (called "will contests") are sometimes brought by heirs or distributees who are unhappy

with their share of the estate, some specific aspect of the will, or the manner in which the personal representative or trustee has managed the estate. These contests can interfere with the decedent's intended plan of distribution, delay final settlement, strain family relations, and require the payment of costly court costs and attorneys' fees from the estate.

Some individuals place "no contest clauses" (also known as "in terrorem clauses") in their wills and trusts to discourage will and trust contests. Such clauses seek to deter challenges by effectively disinheriting an heir, distributee, or beneficiary who unsuccessfully challenges the deceased's estate plan.

No contest clauses are generally enforceable in Wyoming. However, the law varies in different states and you should consult an attorney regarding the effectiveness of specific will and trust clauses.

While many form books will provide formulaic no contest clauses, it is important to consult with an attorney when drafting the clause's language to carry out the client's specific goals. What precise behavior should be enough to trigger disinheritance? Must the heir directly challenge the validity of the will in court? What if an heir conspires with another heir to indirectly challenge the will's terms? What about challenges to the bad faith conduct of a personal representative or trustee?

Individuals desiring to use no contest clauses in their estate plans should carefully consider their overriding goals when reviewing their estate plans with their attorneys. One of the major issues with no contest clauses is whether a testator is giving an heir a sufficient inheritance to deter a potential will or trust contest. Heirs who successfully contest a will or trust may receive a larger share of the estate than they would have originally received. An heir may be more willing to risk losing a small inheritance to create the possibility of receiving a larger share of the estate.

There are alternative ways of avoiding costly will contests, including binding arbitration and effective communication with one's heirs. While nothing is guaranteed, it may be easier (not to mention cheaper) for family members to explain their estate plans to each other and address any resulting hurt feelings or family divisions while they are still alive.

Limitation: The Surviving Spouse's Elective Share

Like many jurisdictions, Wyoming places limits on a testator's right to disinherit a surviving spouse. Traditionally, this took the form of dower and curtesy, which entitled a surviving wife or husband to a lifetime interest in the deceased spouse's estate. Practically all states have repealed such sex-based inheritance statutes.

Wyoming law provides a surviving spouse of any sex to claim a right to receive an "elective share" of the deceased spouse's probate estate.[3] An "elective share" is a specified fraction of the deceased spouse's property, normally one-half or one-quarter of the estate, depending on whether or not the spouse has surviving children. There are time limits within which a spouse must claim his or her elective share. Furthermore, a spouse may waive his or her right to take an elective share before or after marriage, often through a prenuptial (also known as premarital) agreement.

In late 2011, in the groundbreaking In re Estate of George case, the Wyoming Supreme Court ruled that property transferred to a deceased spouse's trust is not included when determining a surviving spouse's right to an elective share.[4] Unless the Legislature amends the statute, this decision may allow Wyoming testators to use trusts to sidestep the elective share statute. However, Wyoming may be in the minority of jurisdictions on this question and the law is subject to change. Disinheritance through a trust can raise a variety of complex questions that may require the advice of a licensed attorney. For example, in 2024, the Wyoming Supreme Court held that its holding in Estate of George applied only to assets transferred to a trust during the deceased spouse's life.[5]

Do You Need an Attorney to Disinherit Someone?

While it is possible for a person to draft and execute a will or trust without legal assistance, these documents, including disinheritance provisions, can raise complex legal questions. It is, therefore, advisable to employ a licensed attorney to assist in drafting and executing wills, trusts, and other legal instruments.

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[1] Wyo. Stat. Ann. §§ 2-4-101 et seq.

[2] Wyo. Stat. Ann. § 2-6-101.

[3] Wyo. Stat. Ann. § 2-5-101.

[4] 2011 WY 157.

[5] Estate of Tokowitz, 2024 WY 5.
