

For Better or For Worse ...

Marriage gives spouses certain legal rights. It is important to be aware of what comes along with marriage, and what does not.

During Incapacity of Spouse

Individual Assets — Any individually owned accounts, personal property, and real property of one spouse cannot be accessed or managed by the other spouse without documentation granting such authority from the spouse owning the asset. Meaning, without a General Durable Power of Attorney listing your spouse as your Agent, the non-owner spouse will have to obtain guardianship through a court proceeding in order access and manage your individual assets for you if you become incapacitated.

Joint Assets — Joint accounts can continue to be accessed by both spouses and deposits and withdrawals can occur without the approval of the other spouse. Joint personal property and real property cannot be sold without both spouses signing the conveyance.

Health Care Decisions — Under North Carolina law, health care decisions may be made by the non-incapacitated spouse if there are no health care directives executed by the incapacitated spouse. However under HIPAA, a federal law, health care providers are not required to release an individual's health care information without documentation granting such authority. Meaning, without a health care directive (HIPAA Authorization, Health Care Power of Attorney, and/or Living Will) listing your spouse as your Agent, the non-incapacitated spouse will have to obtain guardianship through a court proceeding in order to make educated and informed health care decisions for you if you become incapacitated.

Upon Death of Spouse

Spousal Year's Allowance — The surviving spouse can make a claim against the deceased spouse's estate for the value of \$60,000 of the deceased spouse's personal property (i.e. individually owned vehicles, financial accounts, households) that do not automatically pass to the surviving spouse upon the first to die (i.e. joint accounts and property with right of survivorship and/or financial accounts with spouse named as the designated beneficiary).

If You Die Without A Will Intestate Succession

The surviving spouse will receive a portion of the deceased spouse's estate depending on the deceased spouse's family structure at their passing.

For example:

- *If No Children or Parents Living* — Everything passes to surviving spouse.
- *If No Children but Parents Living* — Surviving spouse only receives a portion of the estate, the living parents receive the other portion.
- *If Have Living Child or Children* — Surviving spouse only receives a portion of the estate, the living child or children will receive the other portion.

If You Die With A Will Elective Share

The surviving spouse can make a claim against the deceased spouse's estate if they are left with less than the statutory amount they are entitled to, even if the deceased spouse's Will or estate plan says otherwise.

The statutory percentage the surviving spouse is able to claim of the deceased spouse's estate is based on the length of marriage.

- Less than 5 years = 15%
- 5-9 years = 25%
- 10-14 years = 33%
- 15 or more years = 50%

Upon Separation and Divorce

Equitable Distribution — A judge decides how marital property should be distributed to ensure the distribution is fair and equitable, which is not necessarily "equal."

- Affairs and poor behavior do not have an impact on equitable distribution.

Marital and divisible property are subject to equitable distribution. Separate property is not.

- *Marital Property* — Real and personal property acquired by either spouse or both spouses during the course of the marriage.
- *Divisible Property* — Appreciation and diminution in the value of marital property and property received after the date of separation, but before the date of equitable distribution, that was acquired as a result of the effort of either spouse during the marriage and before the date of separation, including but not limited to: commissions, bonuses, and contractual rights.
- *Separate Property* — Real and personal property acquired by a spouse prior to the marriage or acquired during the marriage by gift or inheritance.

