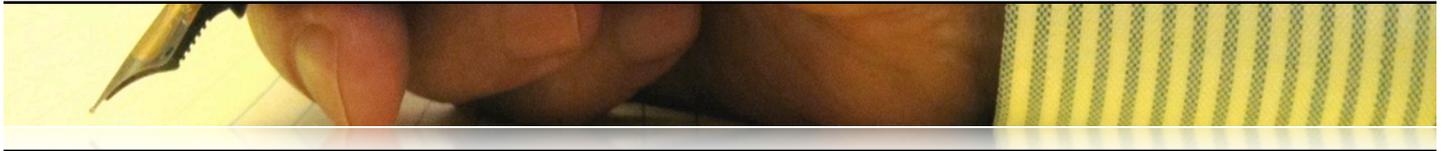


## FAQ: Wills & Wishes

*Teaching workshops about middle-class milestones, I answer a lot of questions for people. This is one of them.*



**Question:** Can I exclude my common law spouse from my Will, if we are separated?

**Answer:** Yes and No.

**Common law marriage**, once established, is equivalent to formal marriage. A man and woman can enter into common law marriage in Texas if they agree to be married, live together in Texas as husband and wife, and tell others they are married. A spouse in a common-law marriage enjoys all the rights and duties of a spouse in a formal marriage. This includes the duty of each spouse to support the other and the right of each spouse to community property.

**Excluding a spouse** from one's Will is effective when one is giving his own separate property and his share of community property.

**Community property** makes the exclusion of the spouse from the Will only partly effective. Whether or not separated from his spouse, but not divorced, one can write a will excluding the spouse from all the property he can give. But as a married person, the person writing the will can give only his separate property and his undivided one-half share of community property. And community property includes almost all property acquired during the marriage. It doesn't include inheritances and gifts, but it includes wages and anything purchased with wages. The separated spouse retains her ownership of half of all community property.

**Marital property agreements** can effectively terminate community property rights. A husband and wife who want to separate without the formality of divorce can sign an agreement dividing their property rights.

Sources: Texas Constitution Art. 16, §15. Texas Family Code §§ 2.401, 3.001, 3.002, 4.102. Texas Estates Code § 251.002.

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