

Who Gets What?

An outline of common estate distributions for married couples without a written estate plan

By The Law Offices of Jeffrey G. Marsocci, PLLC
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Published by *Domestic Partner Publishing, LLC*

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About the Author

Jeffrey G. Marsocci was born in Fort Worth, Texas but was raised in Lincoln, Rhode Island and graduated from Mount Saint Charles Academy High School. He graduated from Hofstra University with an undergraduate degree in Business, and two years later earned his law degree from the same school. He also earned a Certificate Degree in Non-Profit Management from Duke University in 2004, and has earned his Legal Master of Estate Preservation designation from the *Abts Institute for Estate Preservation*. Mr. Marsocci also serves as a member of the Legal Council for The Estate Plan, a nationally recognized estate preservation company headed by Henry Abts, trust guru and author of *The Living Trust*. He is also a founding member of The National Institute for Domestic Partner Estate Planning and participates in the approval and certification process for new attorneys and other advisors seeking membership. (www.NIDPestateplanning.com).

Jeff has been practicing law in his own firm in Raleigh since 1996, and his practice focuses on the areas of Wills, Trusts and Life & Estate Planning with a concentration in assisting all families, including domestic partners and other unmarried couples, married couples, blended families, and individuals. He is also the founder and manager of Partners Practice Development Consulting, LLC, a consulting and publishing firm dedicated to helping domestic partners with their unique life and estate planning goals in North Carolina, and by assisting competent and experienced professionals do the same.

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Whenever someone passes on, their property has to go somewhere, and as the saying goes, “you can’t take it with you.” Many people assume that just because they are married to someone that they do not need to put their wishes in writing. Others assume that simply by telling someone else what they want done that somehow it will happen after they pass on. Neither is true. Still others assume that the state has provided an estate distribution plan that is in line with their wishes. The State of North Carolina has a distribution plan, but in many cases it is not what people want.

In the following examples, property is divided among different classes of people depending on their relationship with the deceased person. Property is also sometimes classified between real property and personal property. Simply put, real property is land and buildings, and personal property is everything else, including financial accounts, furniture, clothing, etc.

The information in this handout will outline some of the most common estate distribution situations for married couples when one of them passes on without a written estate plan. This information only applies to residents in the State of North Carolina. If you have specific questions about your situation, then please contact an attorney in your area for more information.

SITUATION ONE: *Married couple, no children, no parents alive, and one spouse passes on.*

Real Property: All real property goes to the surviving spouse.

Personal Property: All personal property goes to the surviving spouse.

SITUATION TWO: *Married couple, no children, at least one parent alive, and one spouse passes on.*

Real Property: Half of all property is divided equally among any surviving parents, and the other half goes to the surviving spouse.

Personal Property: The first \$50,000 of property goes to the surviving spouse, and then the remaining property is divided in two with one half of all property is divided equally among any surviving parents, and the other half to the surviving spouse.

SITUATION THREE: *Married couple, one child, no parents alive, and one spouse passes on.*

Real Property: Half of all property goes to the child (at age 18), and the other half goes to the surviving spouse.

Personal Property: The first \$30,000 of property goes to the surviving spouse, and then the remainder is divided in two with half of the property going to the child (at age 18) and the other half going to the surviving spouse.

SITUATION FOUR: *Married couple, two or more children, no parents alive, and one spouse passes on.*

Real Property: Two thirds of all property goes equally to the children (at age 18), and the other third goes to the surviving spouse.

Personal Property: The first \$30,000 of property goes to the surviving spouse, and then the remainder is divided in thirds with two thirds of the property divided equally among to the children (at age 18) and the other third going to the surviving spouse.

Most people assume that because they are married to someone that they would automatically get everything that the other spouse has if they passed on. As you can see from the situations above, that is not necessarily the case. The only way to be sure that your wishes regarding property distribution are handled is to put it in writing in legally binding, fully executed estate planning documents.

For more information, or to schedule a free initial consultation to discuss your specific situation, then please contact The Law Offices of Jeffrey G. Marsocci, PLLC at (919) 844-7993.

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