

Kansas Case Study 4

The surviving spouse's share

<u>Scenario:</u> Sarah and Joe have three children. Joe wants Sarah to have everything in case something happened to him but he doesn't have a will. He owns some property as sole owner; some with Sarah as Joint Tenancy with Right of Survivorship (JTWROS).

| 1. | If Joe should die <u>without a will</u> Sarah will inherit: A. All of Joe's property. |
|----|--|
| | B. One half of Joe's separate property, and all of the property held in Joint |
| | Tenancy With Right of Survivorship (JTWROS). |
| | C. One half of all Joe's property. |
| | D. One fourth of all Joe's property. |
| 2. | If Joe and Sarah held all their property in Joint Tenancy With Right of Survivorship (JTWROS) they wouldn't need a will. |
| | True False |
| | raise |
| 3. | If Joe makes a will, he can leave Sarah at most: |
| | A. All of his property |
| | B. One-half of Joe's property. |
| | C. One-third of Joe's property. |
| | D. One-fourth of Joe's property. |
| 4. | If Joe has a will Sarah doesn't need a will. |
| | True |
| | False |
| | |

Adapted for use in the Legally Secure Your Financial Future program; prepared originally for a national template program by <u>Carol A. Schwab</u>, J.D., LL.M., former professor and Extension Specialist, NC State University. Adapted for Kansas use by Carol Young, Extension Specialist Financial Management, Shon Robben, Attorney, Arthur-Green, LLC, 1-2008.

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Answers

See 'KSU Wills & Estate Planning' document for pages cited with answers.

Answers are based upon Kansas law as of January 2008; laws are subject to change. Laws in other states may be different. Ask an attorney for answers to specific personal questions.

THE SURVIVING SPOUSE'S SHARE

<u>Scenario:</u> Sarah and Joe have three children. Joe wants Sarah to have everything in case something happened to him.

If Joe should die without a will Sarah will inherit:

Kansas answer B. One half of Joe's separate property, and all of the property held in Joint Tenancy with Right of Survivorship (JTWROS).

<u>Joint tenancy with right of survivorship</u> is a form of ownership where the asset is owned by two or more people. If one of the joint tenants dies, the asset automatically becomes the property of the surviving joint tenant(s). You can't will your share of a jointly held asset to another person. It passes to the other joint tenant(s) by law. [p.21]

<u>Sole ownership</u> is a form of property ownership in which one individual has absolute ownership and control of the property. At the death of the owner, the property passes to the owner's heirs. If the owner dies without a will, the property passes according to the law of intestate succession. [p. 21]

Without a Will Who gets What? If the decedent is survived by a spouse and children, the spouse will share equally with the children. [p. 28]

If Joe and Sarah held all their property in Joint Tenancy With Right of Survivorship (JTWROS) they wouldn't need a will.

Kansas answer: False

Joint tenancy with right of survivorship is another type of legal tool for transferring property. JTWROS property, such as a home or jointly held money accounts, goes directly to the survivor upon the death of the joint owners. The property transfers by law outside the will. If the deceased person owns property as sole owner or tenant-in-common, a will would be needed to transfer the property owned as sole owner. [p. 28] See also Answer 3.

2. If Joe makes a will, Joe can leave his wife Sarah at most:

Kansas answer: A. All of his property

Property may be transferred from your estate to your beneficiaries during your lifetime or at your death. Property transfers during your lifetime may be by gifts or living trusts. Property transfers at your death may be according to: #2 - the provisions of your will. [page 25]

3. If Joe has a will Sarah doesn't need a will.

Kansas answer: False

Both spouses need a will particularly if there are minor children. She needs a will if she owns or will be the potential owner of property. She needs a will to specify how the assets will be distributed at her death and also name a guardian for the minor children. Waiting until she is a widow to write a will is running a risk. There is the possibility of both spouses dying simultaneously; of her dying first; or of her becoming incompetent and unable to make a will. [pgs. 27-28]

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