



THE LAW OFFICES OF
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FAMILY WEALTH & LEGACY COUNSELLORS

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What is the Family Allowance?

The family allowance is granted under Florida probate law to a deceased person's surviving spouse and minor children during the probate administration process. The purpose of the family allowance is to provide money for the surviving spouse and children to live on while the probate estate is being administered, a process that can take months and sometimes even years. In Florida, the family allowance entitles a decedent's family to an inheritance, even if the will declares otherwise.

The probate process is a court-supervised process for identifying and gathering the assets of a deceased person, paying their debts including taxes, and distributing the assets to the beneficiaries. The deceased person's assets, commonly called the "estate," are normally used to pay the cost of probate (attorneys' fees and costs, appraisals, accountings and court fees), outstanding tax bills and any outstanding debts left by the deceased person at the time of death. The remaining assets of the estate are then distributed to the beneficiaries of the estate.

Florida law provides that a surviving spouse and/or the surviving minor children are entitled to a reasonable family allowance for maintenance during the administration of the decedent's estate. The maximum amount for the family allowance is \$18,000. If there is a surviving spouse, the spouse is entitled to receive the money for him or her and any surviving minor children. If there are only surviving minor children, the children or their custodians are entitled to receive the family allowance. Adult children are not entitled to the family allowance. If a husband was living in Florida when he died, the surviving spouse and any minor children he was supporting or obligated to support are entitled to a "reasonable" allowance paid from the assets of his estate. The family allowance cannot exceed \$18,000 and may be paid in a lump sum or in installments.

In addition to the family allowance, Florida law entitles a surviving spouse to 30% of a decedent's estate, called the elective share. So, in Florida, absent a prenuptial or postnuptial agreement, you cannot disinherit your spouse. For example, if a husband dies with a will that leaves 5% of his estate to his surviving spouse and 95% to the American Cancer Society, the spouse is nonetheless entitled to 30%. The family allowance and the elective share laws shelter a surviving spouse and minor children from financial deprivation during and after the probate process.

The family allowance isn't "chargeable" against the share of a decedent's estate the surviving spouse and children are entitled to inherit, unless the will states otherwise. Thus, the surviving spouse and/or minor children are free to collect both the family allowance in addition to the full value of the estate left to them. Further, the family allowance is paid to the surviving spouse and/or minor children, before the claims of creditors. If husband dies

with an estate of \$25,000 and creditor claims of \$30,000, the surviving spouse will be entitled to \$18,000 and the creditors will only receive \$7,000.

There are many nuances and exceptions when it comes to estate administration. The bottom line is that proper estate planning is central to making sure your assets pass as you intend. For more information on estate planning and estate administration, please visit HoytBryan.com or contact the Law Offices of Hoyt & Bryan at (407) 977-8080.

The Law Offices of Hoyt & Bryan assists families in the protection of their loved ones by focusing their practice in the areas of Estate Planning, Probate and Trust Administration, Elder Law including Medicaid and VA Planning and Special Needs Planning, Pet Planning, Business Succession Planning and Real Estate. The founders, Peggy Hoyt and Randy Bryan, are both dual board certified by the Florida Bar in Wills, Trusts and Estates as well as Elder Law. Hoyt & Bryan is the only law firm in Florida with the distinction of two attorneys with these certifications. We offer many complimentary educational workshops each week in our Learning Center at The Law Offices of Hoyt & Bryan and monthly workshops in the Auditorium of One Senior Place in Altamonte Springs. For more information please contact our office at 407-977-8080 or visit our website HoytBryan.com.