

## Gavel to Gavel: Pretermitted heirs by Jim Milton

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Oklahoma law has long recognized “forced shares” from probate estates, in favor of spouses and pretermitted heirs.

The spousal forced share allows a decedent’s surviving spouse to claim a homestead right in the marital home, an allowance from the probate estate during its administration, and a share of the estate in the event that the decedent’s will did not adequately provide for the surviving spouse. These rights can be waived through an antenuptial agreement and are subject to various rules and exceptions.

Earlier this year, the Oklahoma Court of Civil Appeals held that a residence held by the deceased spouse’s pre-marriage revocable living trust could become the surviving spouse’s homestead, subject to her homestead rights. An attempted transfer of the homestead to a third party without the surviving spouse’s consent or waiver would be invalid. But even if the surviving spouse held a homestead interest in the property, the deceased spouse’s pre-marriage revocable living trust would not be treated as joint industry property and, therefore, would not be subject to the forced share.

Oklahoma law also protects the inheritance rights of children who are unintentionally omitted from the decedent’s will. “When any testator omits to provide in his will for any of his children, or for the issue of any deceased child unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator, as if he had died intestate, and succeeds thereto as provided in the preceding section.”

This rule regarding pretermitted heirs would prevent a parent from disinheriting a child by simply leaving the child out of the will. When drafting wills, attorneys typically include a recitation of the testator’s children, natural or adopted, living or dead. The will should then specifically address each child – and each of the children of any deceased child. If one or more of them will not receive an inheritance from the will, then the will should specifically say so in order to prevent the operation of

the statute.

This rule can result in disputes and litigation. If the will, say, leaves only a prized Quarter Horse to the decedent's youngest child, what happens if the Quarter Horse dies before the decedent? In this example, the bequest fails and the statute may apply to give the youngest child the right to a forced share of the estate.

## Attorneys

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## Practices

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- Estate Planning & Post Death Administration
- Tax & Employee Benefits