



**A Legal Guide for  
Widows**



**A LEGAL GUIDE FOR**

# **WIDOWS**

Los Angeles County  
Commission For Women



**Prepared by the Los Angeles County Commission for Women's Chair of the Older  
Women's Issues Committee**

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## **Introduction**

This guide has been designed to provide you with a summary of many of the matters with which you may be confronted upon the death of your spouse. We hope that it will make the entire process more understandable and less overwhelming. Due to the complexity of the matters discussed and the space limitations of this guide, it should **not** be relied upon as your sole source of information.

With proper guidance, you will find that you are able to carry on and work toward building a new life. But remember, do not be afraid to ask for help. It is both easier and less expensive to handle these important responsibilities correctly the first time. Assistance from a probate attorney and/or a tax expert may be advisable.

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## **A LEGAL GUIDE FOR WIDOWS**

### **1. FUNERAL ARRANGEMENTS**

#### **How do I find out the cost of funeral expenses?**

The Federal Trade Commission Funeral Rule (the "Funeral Rule") requires that funeral providers quote prices over the phone, and provide a General Price List and a Casket Price List when you inquire in person about funeral arrangements and prices.

Licenses for the funeral provider, funeral director and the embalmer must be conspicuously displayed. Before deciding on a funeral provider, compare prices and services in several establishments.

#### **Once I have decided on a funeral provider, what are my rights?**

The Funeral Rule requires that the funeral provider make the following disclosures:

- The cost of each individual funeral product and service offered;
- The funeral provider's policy concerning a fee for cash-advanced items such as newspaper notices, death certificates, and flowers;
- The right to purchase an unfinished wooden box or other alternative container for cremation or simple burial;
- The purchases which are required by law and the specific law involved;

-That consumers have the right to select only the items which they want to buy;

-Information about any non-declinable basic services and overhead fees (provided by the funeral director and staff), which may be a separate charge or added to the cost of caskets; and

-The cost of embalming and notice that it is not required by law except under certain circumstances (see below).

Under California law, the funeral provider must provide:

-A price on or in the casket;

-A separate casket price list;

-An itemized written final agreement; and

-Truthful disclosure of service charges for cash advances.

### **Does California law require embalming?**

No. California law does not require embalming except in specific circumstances, such as if the body is to be transported by a common carrier, and is not otherwise unable to be embalmed.

### **How may I limit funeral expenses?**

Usually the major expense is the casket. By choosing the least expensive casket, you may reduce the overall cost. Caskets may now be sold by retailers, who are required to provide customers with a written price, and statement of all costs associated with the casket or alternative container. By law, retail casket vendors may not arrange funerals or cremations.



Additionally, if you purchase a casket or alternative container from a source other than the funeral provider, you cannot be charged a "casket handling" fee, although you must meet the standards of the cemetery and take into consideration the size of the body.

California law specifically prohibits the funeral provider from requiring a casket for cremation, but does require a simple transportation box or container be made available.

Unnecessary expenses such as limousines can add to your bill. Don't be afraid to ask questions and to choose simple arrangements. Finally, make sure that you have a total dollar amount in writing *before* you sign any contract with a funeral provider.

### **What expenses must I consider regarding cemeteries?**

When contacting the cemetery for information and prices, find out whether they permit headstones or require ground-level grave markers. Although not required by law, most cemeteries require grave liners or vaults. Ask if the cemetery sells such items or charges for installation if you buy elsewhere. Also inquire about the fees for opening and closing a grave and the cost for perpetual (endowment) care.

### **What about cremation?**

Cremation is not a funeral ceremony and will not change or interfere with a family's preference if either a funeral ceremony or memorial service is desired. Consideration must be given to final disposition of the ashes either by scattering the ashes or placing them in an urn or other container for placement in an urn garden, a columbarium or burial. Urn prices vary substantially.

-That consumers have the right to select only the items which they want to buy;

-Information about any non-declinable basic services and overhead fees (provided by the funeral director and staff), which may be a separate charge or added to the cost of caskets; and

-The cost of embalming and notice that it is not required by law except under certain circumstances (see below).

Under California law, the funeral provider must provide:

-A price on or in the casket;

-A separate casket price list;

-An itemized written final agreement; and

-Truthful disclosure of service charges for cash advances.

### **Does California law require embalming?**

No. California law does not require embalming except in specific circumstances, such as if the body is to be transported by a common carrier, and is not otherwise unable to be embalmed.

### **How may I limit funeral expenses?**

Usually the major expense is the casket. By choosing the least expensive casket, you may reduce the overall cost. Caskets may now be sold by retailers, who are required to provide customers with a written price, and statement of all costs associated with the casket or alternative container. By law, retail casket vendors may not arrange funerals or cremations. Additionally, if you purchase

California law strictly governs the cremation process, including the deceased spouse's ashes. Specific authorizations, disclosures and acknowledgments must be obtained before the cremation process can proceed. You are advised to consult a funeral provider.

### **What should I do if the body is donated for research?**

If the body is donated to a medical school or research organization, they will take care of final disposition. However, if you wish to have the body returned, burial arrangements will have to be made. Be aware that the body may not be returned for up to two years.

Arrangements must be made in advance by you, and you should follow up with the institution you choose from time to time as the research period is usually lengthy. By law, the institution that accepts the body pays all expenses, such as storage. You should also inform your mortuary of the donation for research, and also keep it informed regarding the progress of the research.

### **Does Social Security help with funeral costs?**

Yes. If an eligible wage earner dies, the surviving spouse, eligible minor child, or eligible disabled adult child is entitled to a maximum of \$255 for funeral expenses. Make an appointment with your local Social Security office to discuss other possible benefits. A divorced spouse may also be entitled to benefits and should request an appointment to determine eligibility. If you receive a denial of eligibility, you have the right to appeal.

Please refer to a pamphlet entitled "Survivor's Benefits," SSA Publication No. 05-10084. Phone: (800) 772-1213

### **Is a Veteran entitled to benefits for funeral costs?**

Yes. The Department of Veteran's Affairs offers death benefits for eligible veterans and their families which include:

- \$300 for funeral services if death is due to a service-connected disability;

- Free burial in a government-owned cemetery if space is available;

- \$300 for funeral expenses if a non-government cemetery is used; and

- A headstone or monument at no charge or \$70 towards a headstone.

If you wish to bury your spouse in a Veteran's Affairs National Cemetery, it is advisable to request an appointment with the local Veteran's Affairs office because space available for veterans is limited. You may need to make your preferences known at that time. The dollar cost may also vary.

## **2. THINGS TO DO AFTER THE FUNERAL**

You will need several certified copies of the death certificate. The mortuary usually will order these for you at cost. If additional copies are needed, you may obtain them from the Hall of Records in the County where your spouse died.

Locate the original of your spouse's Will, if any. Check all safe deposit boxes. Locate the safe deposit box and key. Open, examine and list the contents of the safe deposit box. Take possession of the contents and secure them. If you cannot find the key to the safe deposit box, the bank will drill the box open and you will be charged for the cost of this service.

Make a list of all of your spouse's property, including real property, bank accounts, life insurance, pensions and other retirement plans, stocks, bonds, money lent to others by your spouse, cars, boats, and other valuable personal property.

It will be necessary to know how title was held to these assets. Gather copies of deeds, pink slips, stock certificates, and other ownership documents. Watch the mail for correspondence and other documents related to these assets.

### **3. INSURANCE**

#### **What types of insurance may provide survivor's benefits?**

Life insurance, home mortgage insurance, accident insurance, worker's compensation, employee and union insurance are all examples of insurance which may provide survivor's benefits.

#### **How do I find out who my spouse's insurance carriers are?**

Look for insurance policies, payment receipts, and cancelled checks. Contact your spouse's personal insurance broker, employer, and union representative.

#### **How do I receive my benefits?**

Notify all insurance carriers as soon as possible and request an application. Benefits are paid directly to the named beneficiary, and probate will generally not be required.

#### **4. SOCIAL SECURITY**

##### **Am I entitled to Social Security benefits?**

An eligible widow with minor dependent children under 16 is entitled to survivor benefits. A one-time benefit may also be available for funeral expenses.

Benefits may in some cases be extended to a divorced spouse.

Certain other widows may be eligible for benefits; however, the law frequently changes in this area. It is recommended that you contact your local Social Security office to determine eligibility.

##### **How do I apply for my benefits?**

There are three ways to apply for Social Security benefits. First, you can call the toll-free number, (800) 772-1213, and apply over the phone. Second, contact the nearest Social Security office and make an appointment for a personal interview. Finally, you can access the Social Security website at [www.socialsecurity.gov](http://www.socialsecurity.gov) and apply for benefits. You will need to provide the name and social security number of your deceased spouse.

Take a certified copy of the death certificate and your marriage certificate to the conference. The Social Security officer will inform you of your rights and benefits.

Always retain your original documents. If you are not satisfied with the decision made regarding your benefits, you have the right to appeal the decision. Please refer to a pamphlet entitled "The Appeals Process," SSA Publication No. 05-10041. You also have the right to be represented by an attorney or other qualified person of your choice. Please refer to a pamphlet entitled "Your Right To Representation," SSA Publication No. 05-10075. Both are available from Social Security. Phone: (800) 772-1213

## **5. PENSION BENEFITS**

### **Am I entitled to pension benefits?**

You may be entitled to military, government, union, employer-provided, or individual pension benefits.

#### **A. Military Pensions**

A widow and minor children may qualify for military pension benefits if:

- Your spouse served in the military, was on active duty, was a resident of a V.A. hospital, or was receiving a military disability pension;

- Your spouse or former spouse had a minimum of 20 years creditable service.

### **How do I apply for any benefits?**

Contact the nearest Veteran's Affairs office. Military discharge papers, a certified copy of the death certificate, a marriage certificate, or divorce decree (if applicable), will be required. Keep copies of your correspondence.

Military pensions are complicated and take a considerable period of time. Divorced spouses may also apply. Legal advice may be necessary. If so, inquire about the fees involved, how long the process may take, and whether you are eligible to receive temporary aid pending the final determination of benefits.

## **B. Employer Provided Pensions**

You may be entitled to benefits from your spouse's employer or former employer.

Notify each of your spouse's employer(s) or former employer(s) of his death. You will be informed whether you are entitled to any benefits and how to proceed.

Inquiries regarding employer-provided pensions for large corporations should be directed in writing to their Human Resources Department. Keep a copy of your letter. You will need to provide your spouse's social security number.

## **C. Individual Retirement Plans**

You may be named as the beneficiary of your spouse's Keogh, IRA, or other retirement account.

Tax returns, bank statements, and other investment statements are a good source of information about the location of these accounts.

Contact the institutions where such accounts are located, and advise them of your spouse's death.



## **6. USE OF CREDIT CARDS AFTER DEATH**

Credit cards in your name or jointly in your name and your spouse's name remain in effect so long as you pay your bills.

Under the Equal Credit Opportunity Act, a creditor cannot cancel your account simply because you become a widow. However, a creditor may require that you re-qualify for your own credit card based on your assets and income.

California law requires that you be considered for credit on the same basis as a man.

## **7. WILLS**

### **What happens if my spouse left a Will?**

Your spouse has a right to dispose of one-half of your community property and all of his separate property.

A Will does **not** control who will receive certain assets. Property held in joint tenancy passes automatically to the surviving joint tenant by operation of law. The named beneficiary of a life insurance policy, the beneficiary for retirement death benefits, and a bank account which is held in trust for another person are examples of other assets which pass to the individual named.

If you are not mentioned in your spouse's Will, consult an attorney regarding your right to inherit under California law.

## **What happens if my spouse does not leave a Will?**

If your spouse dies without a Will, the person(s) entitled to receive his property will be determined by the laws of intestate succession. For example, if a man who is survived by a wife and children dies without a Will, his share of the community property will pass to his surviving spouse, while his separate property will pass in part to his surviving spouse and in part to his children. Each case must be determined individually, as the laws of intestate succession can be quite complex. Consult your attorney regarding your right to inherit under the laws of intestate succession.

## **8. PROBATE AND OTHER WAYS TO TRANSFER PROPERTY**

### **What is Probate?**

Probate is a court-supervised proceeding for transferring title to property after the death of an owner of such property.

### **What property is subject to Probate?**

A probate proceeding is not required to transfer title to certain assets such as joint tenancy property, life insurance benefits, U.S. savings bonds, employee benefits, and property held in trust. Although property left unconditionally (outright) to a surviving spouse normally does not have to be probated, you may wish to take advantage of a simplified probate proceeding for transferring such property. Property left to a spouse in trust may be subject to probate under certain circumstances. Property left to someone other than a spouse is generally subject to probate.

## **When can I transfer property without Probate?**

A. Title to assets in certain small estates may be transferred without a formal probate proceeding. This method can be very useful and inexpensive. Since the law may change, consult with an attorney to see if title to property in the estate may be transferred without a formal probate proceeding.

B. Title to real property held in joint tenancy can be transferred by recording an Affidavit of Death of Joint Tenant with a certified copy of the Death Certificate attached to the County Registrar of deeds upon death of the spouse.

C. Title to real property that is community property may be transferred by filing a Spousal Property Petition with the Probate Court. Similar to real property that is held in joint tenancy, real property that is held as community property with right of survivorship can be transferred by recording an Affidavit of Death of Spouse with a certified copy of the Death Certificate attached. However, you may wish to consult an attorney to determine if it is advantageous to use the simplified probate proceeding for transfer of property left to a spouse.

D. Joint tenancy assets such as bank accounts and stocks can be generally be transferred to the surviving joint tenant by presenting a certified copy of the Death Certificate.

E. Contact the Department of Motor Vehicles for information regarding transfer of title to motor vehicles.

REMEMBER, property which is not subject to probate may still be included in your spouse's estate for the purpose of determining death taxes. Avoiding probate does not mean that you avoid taxes. Consult your tax specialist.

## **What are the basic steps in a probate proceeding?**

A probate proceeding begins by filing the will and required documents with the court. Notice of Death must then be published in a newspaper and mailed to all beneficiaries and heirs and in the will as required by law. A hearing will be held. If no objections are filed, the decedent's last Will, if any, will be admitted to probate, and the personal representative (executor/ executrix or administrator/administratrix) will be appointed by the court. The court will issue certified copies of a document called Letters to the personal representative, giving the representative authority to act on behalf of the estate.

The personal representative or executor is in charge of collecting all of the decedent's property and preparing an inventory. The inventory is sent to a probate referee who generally appraises the non-cash assets. The inventory and appraisal must then be filed with the court within three months after the date of the personal representative's appointment.

Creditors of the decedent have four months from the date the personal representative is appointed to file a claim. If a creditor fails to file a claim within this period, a subsequent claim is barred.

During the period of probate administration, the surviving spouse, minor children, and certain other relatives may be entitled to a family allowance.

When the personal representative has completed all required tasks, an accounting is generally prepared. The court is requested to distribute the property to the persons designated under the decedent's last Will, or under the laws of intestate succession if the decedent left no Will.

After all property has been distributed, the personal representative is given permission to close the estate.

### **How long does probate usually take?**

For a simple estate, the probate process generally takes from nine to twelve months. California law requires that the personal representative file a petition for final distribution or a report on the status of the estate within one year of the date when Letters were issued. If a federal tax return is required, the time limit is extended to eighteen months.

### **What will probate cost?**

Unless bond is waived either in the decedent's Will or by all beneficiaries, the personal representative will be required to post a bond. The amount of the bond will be determined by the type and the value of the property subject to probate. The probate referee will be entitled to a fee for appraising certain assets of the estate. There will also be miscellaneous expenses for such items as court filing fees and publication costs.

Attorney's fees and commissions for the personal representative are fixed by California law and are based upon the value of the probate estate. No fees or commissions may be paid until the court orders such payment. A personal representative may decide to waive his or her commission. This should be discussed with your attorney.

The court may also allow the personal representative or the attorney additional compensation for extraordinary services. For example, handling the sale of real property is considered to be an extraordinary service.

## 9. TAXES

### **Will there be taxes to be paid?**

There is no longer a California inheritance tax. However, the federal government levies an estate tax if the value of the total estate exceeds a specified amount. Gifts to a surviving spouse, either during life or upon death, are exempt from federal estate taxes. If a federal estate tax is due, a California estate tax known as a pickup tax may be imposed, and a California estate tax return may need to be filed.

You may file a joint return for the year that your spouse died. If you believe that federal income tax may be due, call the Internal Revenue Service at (800) 829-3676. Ask for a copy of "Information for Survivors, Executors, and Administrators," Publication No. 559.

All real property taxes must be paid when due. Generally, change of title to real property is subject to reappraisal unless otherwise exempt. In some cases, an application for exemption from reappraisal of real property must be filed with the county assessor or your real property may be reassessed. Contact your local assessor's office or tax specialist.

Since tax laws are complex and subject to frequent change, it is **imperative** that you consult with your attorney or tax expert.

## 10. DIRECTORY FOR FURTHER ASSISTANCE

**ATTORNEYS** - If family or friends do not know of an attorney specializing in probate or tax matters, contact the attorney referral service in your area. The State Bar of California has a Lawyer Referral Service that may assist you. The phone number is (866) 442-2529.

**FUNERALS** - If you need further information, contact:

Cemetery and Mortuary Association of California  
925 L Street, Suite 220  
Sacramento, CA 95814  
(916) 441-4533  
Internet address: [www.CMACcalifornia.org](http://www.CMACcalifornia.org)

California Department of Consumer  
Affairs  
Cemetery and Funeral Bureau  
400 R Street, Suite 3080  
Sacramento, CA 95814  
Phone: (800) 952-5210  
Internet address: [www.cfb.ca.gov](http://www.cfb.ca.gov)

**LIFE INSURANCE** - If you know a policy exists but are unable to locate it, suggestions for conducting your own search are available from the American Council of Life Insurers on their internet website. There are also policy locator services that are offered for a fee. For further information, contact:

American Council of Life Insurers  
101 Constitution Avenue, NW  
Washington, D.C. 20001-2133  
Phone: (202) 624-2000  
Internet address: [www.acli.com](http://www.acli.com)

**MILITARY BENEFITS** - Information about burial benefits and dependents' and survivors' benefits can be obtained on the internet ([www.va.gov](http://www.va.gov)) or by contacting the closest office of the Veteran's Administration listed in the telephone directory.

The Los Angeles County Department of Military and Veterans Affairs can also provide information about military and burial benefits. You may contact this office at:

Los Angeles County Department of  
Military and Veterans Affairs  
1816 South Figueroa Street  
Los Angeles, CA 90015  
Phone: (213) 744-4841

**PAMPHLETS AND OTHER INFORMATION** - The State Bar of California publishes pamphlets entitled "Do I Need A Will?," "Do I Need Estate Planning?," and "Do I Need A Living Trust?," which may be helpful. For a copy of any of these pamphlets, send a stamped, self-addressed envelope with your request to:

The State Bar of California  
Office of Media & Information Services  
180 Howard Street  
San Francisco, CA 94105-1639  
(415) 538-2280



You may also download these pamphlets on the internet at the State Bar website.  
The internet address for the State Bar of California is: [www.calbar.ca.gov](http://www.calbar.ca.gov)

The American Association of Retired Persons (AARP) also has publications, and self-help guides that are available on the internet. Contact AARP at:

AARP  
601 E Street, NW  
Washington, D.C. 20049  
Phone: (888) 687-2277  
Internet address: [www.aarp.org](http://www.aarp.org)

**SOCIAL SECURITY** - Contact your local office listed in the telephone directory, or visit the Social Security website, which can be found at: [www.socialsecurity.gov](http://www.socialsecurity.gov)

**SUPPORT GROUPS** - There are support groups available for widows. Contact your local hospital, place of worship, senior citizen or community center, or consult your telephone directory.

## GLOSSARY

1. **ADMINISTRATOR (ADMINISTRATRIX, if female):** A person appointed by the court to manage the assets and liabilities of a decedent.
2. **COMMUNITY PROPERTY:** Property acquired by either spouse during marriage except by gift, Will, or inheritance.
3. **DECEDENT:** The person who died.
4. **ESTATE:** Property owned by a person, real and personal.
5. **EXECUTOR (EXECUTRIX, if female):** A person named in a decedent's Will to carry out the directions and requests in the Will, to dispose of the property therein according to the directions of the decedent, and perform the probate functions for the estate of the decedent.
6. **FUNERAL DIRECTOR:** A person licensed by the State Board of Funeral Directors and Embalmers that is designated by a funeral provider to exercise direct supervision and control over said establishment.
7. **FUNERAL GOODS:** All products sold directly to the public in connection with funeral services.
8. **FUNERAL PROVIDER:** A licensed supplier of both funeral goods and funeral services.
9. **FUNERAL SERVICES:** Includes services used to care for and prepare bodies for burial, cremation, or other final disposition, and services used to arrange, supervise, or conduct the funeral ceremony or final disposition of human remains.

- 10. INTTESTATE:** Refers to a person who dies without a valid Will.
- 11. LETTERS**
- A. LETTERS OF ADMINISTRATION:** A formal document issued by the probate court that appoints an administrator/administratrix of an estate.
- B. LETTERS TESTAMENTARY:** A formal instrument of authority and appointment that empowers an executor/executrix to perform required duties.
- 12. PERSONAL PROPERTY:** Property that can be moved, such as motor vehicles, furniture and bank accounts.
- 13. PROBATE ESTATE:** The property of a decedent that is subject to probate proceedings and administration by the administrator/administratrix or executor/executrix of an estate.
- 14. REAL PROPERTY:** Land, and that which is permanently affixed to land, such as your home.
- 15. SEPARATE PROPERTY:** Property owned by either spouse prior to marriage, or property received at any time by gift, Will, or inheritance.
- 16. TRUST:** A legal arrangement in which property is transferred into a separate legal entity and managed by one person or institution for the benefit of another person.

*The agencies listed in this document are for informational purposes only. No*

## NOTES

**The Los Angeles County  
Commission for Women**

**The Los Angeles County Commission for Women is a 15-member  
Commission created by the Los Angeles County  
Board of Supervisors.**

**The Commission for Women seeks to represent the interest and concerns  
of women of all races, ethnic and social backgrounds, religious  
convictions, sexual orientation and social  
circumstances.**

**We appreciate your interest in the activities of the Commission for  
Women. Since 1975, we have been conscientiously working to represent  
the concerns and interests of the women residing in the County of Los  
Angeles .**

**If you would like to contact us, please refer to the following:**

**Los Angeles County Commission for Women  
B50 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012**

**Telephone: 213-974-1455**

**Facsimile: 213-633-5102**

**E-mail: [laccw@bos.lacounty.gov](mailto:laccw@bos.lacounty.gov)**

**Website: <http://laccw.lacounty.gov>**

## Los Angeles County Vision



Our **purpose** is to improve the quality of life in Los Angeles County by providing responsive, efficient and high quality public services that promote self-sufficiency, well-being and prosperity of individuals, families, businesses and communities.

Our **philosophy** of teamwork and collaboration is anchored in our shared values:

- o Responsiveness
- o Integrity
- o Professionalism
- o Commitment
- o Accountability
- o A can-do Attitude
- o Compassion
- o Respect for Diversity

Our **position** as the premier organization for those working in the public interest is established by:

- o A capability to undertake programs that have public value;
- o An aspiration to be recognized through our achievements as the model for civic innovation; and
- o A pledge to always work to earn the public trust.