

What the surviving spouse **needs to do***

**And what to do if they don't*

Glenn M. Karisch
The Karisch Law Firm, PLLC
Austin, Texas

1

The materials

- **Protecting the Surviving Spouse's Rights: A Toolkit**, by Brandy Baxter-Thompson (2020)
- **Drafting Agreements for Failure to Fund a Trust or to Intentionally Not Fund a Trust**, by Mickey R. Davis (2018)

Thanks, guys!

2

Four scenarios

- The surviving spouse comes in promptly after her spouse's death and wants to do what should be done
- The surviving spouse comes in but is reluctant to spend money (despite your very reasonable fees)
- The surviving spouse comes in, but because of grief or other factors is reluctant to act
- The surviving spouse doesn't come in or refuses to do anything, and the kids of the surviving spouse contact you after the surviving spouse's death

3

Widow calls or emails two days after death

- "Are your immediate cash needs met? If so, you've got time. Take care of grieving and family needs. We'll be here when you are ready."
 - 9 or 15 months (or 2 years) to deal with estate tax/DSUE (portability) issues
 - 4 years to probate will/open an administration
 - Exceptions:
 - A possible taxable estate
 - Business issues/difficult assets
 - Property passes to persons other than surviving spouse
- Still, calendar a call or email to the surviving spouse as reminder

4

Widow calls or emails two days after death

- “If you want to go fast, we can go fast.”
 - If there’s an original will, you may be able to go fast
 - Get an engagement letter, but the applicant doesn’t have to sign the application
 - Thursday posting deadline
 - Get the hearing date as soon as possible
 - Quick survey – retainer amounts for straight probate
 - Factors which may slow you down
 - No will or lost will
 - Defective will
 - Waivers/citation issues
 - Delays getting death certificate
 - Quick survey – retainer amounts for determination of heirship

5

What if you represented the decedent?

- Hopefully your estate planning engagement letter terminated the relationship when documents were finished
- The decedent’s attorney-client privilege still applies
 - If a personal representative is appointed, he/she can assert or waive privilege
- If there is likely to be a contest, consider declining the representation, or be prepared to withdraw and cover the possible withdrawal in the engagement letter.
- If there is not likely to be a contest, then full speed ahead
 - New engagement letter with applicant
 - Separate representation

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: What the Surviving Spouse Needs to Do, and What to Do if They Don't

Also available as part of the eCourse

[Hooked on CLE: June 2023](#)

First appeared as part of the conference materials for the 24th Annual Estate Planning, Guardianship and Elder Law Conference session "What the Surviving Spouse Needs to Do, and What to Do if They Don't"