

# 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

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## 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!

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## 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

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## 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

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## 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

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## 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

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

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24<sup>th</sup> Annual Estate Planning, Guardianship and Elder Law Conference session  
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