

WILLS AND ESTATES



Gregory L. Landry
Senior Attorney, Litigation Unit Leader
Acadiana Legal Service Corporation
1020 Surrey Street
P.O. Box 4823
Lafayette, LA 70502-4823

This is general information on inheritance law in Louisiana, which is complex subject. It is not advisable to try to resolve any inheritance problems without first consulting an attorney.

I. CONCEPT OF AN ESTATE

- A. All the Debts and Obligations of the Deceased
- B. All the Assets, Rights and Property of the Deceased
- C. Includes his or her half of any Community Property

II. TESTACY VERSUS INTESTACY

- A. Intestate (without a will), Property Passes in the Following Order:
 - 1. Down to your descendants
 - 2. Community property to your Spouse
 - 3. Across to your brothers and sisters
 - 4. Up to your Parents
 - 5. Separate property to your Spouse
 - 6. Up to your other Ascendants and Collaterals
- B. Testate (with a will), Property Passes According to the Provisions of the Will

III. FORCED HEIRS

- A. Reasons for Forced Heirs
 - 1. Moral duty
 - 2. History and culture
 - 3. Reduced dependency upon the state and other strangers
- B. Who is a Forced Heir
 - 1. Children under 23
 - 2. Children who are disabled

IV. LEGAL REASONS FOR DISINHERITING A FORCED HEIR

- A. Having attempted to kill the parent
- B. Accusing the parent of an infamous or capital crime
- C. Striking/attempting to strike the parent
- D. Cruelty/crime/serious injury to the parent
- E. Minor child marries without parent's consent
- F. Child convicted of felony punishable by death or life imprisonment
- G. Failure to contact parent your for > 2 years (when you knew how to)
- H. Using violence or coercion to prevent your parent from making a will

V. SUCCESSION (Probate Proceeding)

- A. Legal Proceeding to Pass Property from the Deceased to Others
- B. Answers Questions:
 - 1. Who are the heirs or legatees?
 - 2. What property exists?
 - 3. What debts exist?
 - 4. Is there a will?
- C. Legal Result is a Judgment Giving the Heir(s) Possession of Their Inheritance

VI. QUESTIONS AND ANSWERS

A. What is a Will?

A will is a document executed with the formalities of law, whereby a person makes disposition of his property to take effect after his death.

B. What Happens when an Individual Does Not Leave a Will?

When a person dies without leaving a will, the Louisiana Laws of an Intestate Succession determine who will inherit his estate. If the deceased leaves children, they will inherit the estate in equal portions. If a child dies before his parent, then the child's children will inherit his share, that is, the grandchildren can inherit their parent's share of a grandparent's estate. Where the deceased has never had any children, who will inherit his property depends upon whether it is separate or community property.

C. What is Community Property?

Generally speaking, community property is property acquired during the course of a marriage through the effort, skill, or industry of either the husband or the wife. Community property includes the earnings of both spouses during the marriage, the house and household goods they buy, and property given to them jointly.

While they are married, community property belongs equally to both the husband and the wife.

D. What Happens to Community Property when one of the Spouses Dies Without Leaving a Will?

When one of the spouses dies, the surviving spouse receives full ownership of his/her one-half of the community property. The other half belongs to the deceased spouse's estate. If the deceased spouse has died without leaving a will, his children inherit his half of the community, but the widow or widower retains a usufruct over the property. This means that the surviving spouse can use and enjoy the benefits of the property until death or remarriage.

Example: Mr. & Mrs. A have three children. The only thing they own is a house which they purchased during their marriage. If Mr. A dies without leaving a will, Mrs. A receives one-half of the house in her own right. The three children inherit the other half, subject to Mrs. A's usufruct. She can live in the house for the rest of her life, or until remarriage.

If the deceased spouse has died and left no descendants, then the surviving spouse receives the entire community property.

E. What is Separate Property?

Separate property is property that belongs to one spouse exclusively. This includes property acquired before the marriage, or property given to or inherited by one spouse only. If, for example, a wife inherits money from her father, that money is her separate property. If she uses that money to purchase a house or an automobile, that too is her separate property.

F. Who Inherits Separate Property when a person Dies Without Leaving a Will?

When a person who has not made a will dies and leaves separate property, his children inherit it in equal shares.

Grandchildren can inherit too, as explained in "B" above. If the deceased has never had any children, then his brothers and sisters inherit the separate property, subject to a usufruct in favor of his parents, if either of them is still alive. If there are no surviving brothers or sisters, nor any nieces or nephews, then the deceased's parents inherit the separate property. Where the deceased has made no will, the surviving spouse can only inherit separate property if the deceased leaves neither descendants, nor parents, nor brothers and sisters, or descendants from them.

Example: Neither Mr. nor Mrs. A have ever had any children. Together they own a house which they purchased after they were married. Mr. A also owns some shares of stock which he inherited from his parents, now dead. Mr. A has one sister. Mr. A dies without leaving will. Because the house is community property, and Mr. A has left no descendants, Mrs. A gets full ownership of the house; half as her share in the community and half as her husband's share, which she inherits (see "D" above). The shares of stock, however, are Mr. A's separate property, and his sister inherits these.

G. Can Illegitimate Children Inherit under the laws of Intestate Succession?

Yes, illegitimate children have the same inheritance rights as legitimate children provided they have been acknowledged by the parent from whom they wish to inherit or they have proved their parentage in a civil court proceeding. A parent can acknowledge an illegitimate child in one of two ways: by registering the birth or baptism of the child; or by signing a declaration before a notary public and two witnesses.

VII. QUESTIONS TO ASK YOURSELF

You will likely need the following material when drafting a will with your lawyer.

Having the complete information will save your lawyer time and you money!

- A. Who will be guardian for your minor children?
- B. Who do you wish to be alternate guardian for your minor children?
- C. Where are your special papers kept? (List them and name their exact location)
- D. In the event of your death how would you wish to have your assets distributed?
- E. If you are married and both you and your spouse die at the same time, how would you wish to have your assets distributed?
- F. Do you wish to make any special gifts of property to a certain person?
- G. Who would you like to be in charge of paying your debts, preparing your tax returns and distributing your estate? Have you spoken with them about this? Who do you wish to be do it if your first choice can't or won't?
- H. If you are not confident of your spouse's or children's ability to manage the estate you will leave to them at your death, do you wish to leave your property in a trust which will make periodic payments to them for their benefit?
- I. If your will creates a trust for the benefit of your spouse and/or children, who do you wish to be trustee? Who do you wish to be alternate trustee?
- J. Do you wish to make any charitable contributions to your church or other organization? (Name organization, address, amount or proportion of estate.)
- K. Do any of your beneficiaries have any health problems which might cause them to need special assistance from you under the terms of your will?
- L. Do you expect to receive an inheritance which should be considered in your will?

VIII. MEETING WITH A LAWYER TO DRAFT A WILL – What to Bring

- A. Name, Age, and Social Security Number
- B. Name of spouse, Age and Social Security Number
- C. Children (names, ages, addresses, occupations; names of spouses (if married and there are grandchildren)
- D. Bank accounts (name and location of bank, amount held by husband, wife and jointly held by both, exact names of accounts) Amounts in checking, savings, and cash.
- E. Stocks and bonds (descriptions, years purchased, number, purchase price, exact name of owner, face value)
- F. Life insurance (company, policy number, double indemnity amount, owned by husband/wife/jointly, exact name of insured and beneficiary on policy)
- G. Trusts (type, location, trustee, who established, exact name of beneficiary, value, owned by whom)
- H. Notes, mortgages, and accounts receivable (description, year acquired, value, person who owes you)
- I. Real estate (list type of property and acres, location, year acquired, cost, owned by, market value)

J. Personal property (livestock, motor vehicles, machinery, crop inventory, home furnishings, jewelry, art, antiques, personal items; describe, cost and value, and who owns)

K. Liens against property (property mortgaged, name of creditor, date due, remaining amount due from husband, wife, jointly)

L. Mortgages and other real estate debts (description, name of creditor, date due and amount remaining to be paid by husband, wife, jointly, and whether insured)

M. Other personal liabilities (unsecured notes, insurance loans, notes endorsed, real estate taxes, personal property taxes, state taxes including income and inheritance, federal taxes including income, gifts, etc., unsettled claims, name of creditor, date due, amount remaining to be paid by husband, wife, jointly)

N. Other financial information (income last year, current income, salary, retirement income, annuities, rents, interest, bonuses, dividends, trusts, capital gains, etc.)

O. Retirement benefits (pensions, profit sharing, deferred compensation, social security, annual benefits for husband and wife, amount invested and death benefits)

IX. WRITING YOUR OWN OLOGRAPHIC WILL

A. In Louisiana, a person can make a valid and enforceable will by simply writing the will out entirely in his/her handwriting. This type of will is called an olographic testament. In order for the will to be valid, each page of the will must be signed, dated, and written by the hand of the person making the will. In order to avoid any problems in the future, erasures should not be made. Also, words written in the hand of another will not be given any effect, and thus, should be avoided. "Fill-in-the-blank" forms, commonly available in stores, are not valid wills in Louisiana.

B. When writing the date of the will, you must write the full date, for example, June 1, 2007. Do not write the date as 06-01-07. This is considered ambiguous and may invalidate the will.

C. There are some things which you can not legally do in a will, it is always a good idea to speak with an attorney about what you want to happen after your death.