

Probate & Succession in Louisiana



The information provided in this booklet is general information regarding probate and succession in Louisiana. You should always consult with an attorney knowledgeable in this area of the law about your particular situation.

PROBATE & SUCCESSION IN LOUISIANA

Louisiana laws regarding the transfer of property to your heirs at death are very different from other States' laws. Therefore, if you have any questions about what may happen to your property at your death, you should consult with a Louisiana lawyer knowledgeable in this area of the law. However, here are some answers to commonly asked questions that might help you better understand Louisiana's laws regarding how and to whom your property will be distributed at your death.

1. What Happens To Property When Someone Dies Without A Will?

To determine how your estate is distributed if you die without a will in Louisiana you must determine two things. First, you must know if the property is **community property** or **separate property**. Next, you must know what relationship the survivors are to the deceased. The chart on page 5 of this booklet provides how your property passes at your death if you die without a will.

2. What Is Separate Property?

Separate property includes 1) property owned before marriage; 2) property inherited by one spouse during marriage; or 3) property given to only one of the spouses during marriage.

3. What Is Community Property?

Community property is property acquired by either of the spouses during the marriage unless the property is separate property as described above or unless the spouses entered into a pre-nuptial agreement (called a marriage contract in LA) prior to the marriage. Generally, each spouse owns half of the community property during the marriage

4. What Is A Usufruct?

In order to understand Louisiana inheritance law, you need to be familiar with the legal terms **usufruct** and **usufructuary**. Often in Louisiana, one person will inherit the right to use property and receive the fruits (income) from property. This right is called a **usufruct** and the person who inherits this right is called a **usufructuary**. When someone inherits a usufruct, another person inherits an underlying right to own the property at the death of the usufructuary. A house is a perfect example of this. One person may have the right to use (or to live in) the house and to receive

rents if the house is leased while another person has the underlying right to own the house after the usufructuary dies. This underlying right is referred to as “naked ownership.” While the naked owner can sell or mortgage their rights in the house, it has no effect on the usufructuary who can still continue to live in the house. When the person who has the usufruct dies, the person who has the naked ownership automatically becomes the “full owner.” This is a basic description of usufruct. However, there are many complex and changing rules about what a usufruct can and cannot do that are beyond the scope of this booklet. An attorney should be consulted about specific issues related to usufructs.

If a married person dies without a will, the surviving spouse inherits a usufruct over the deceased spouse’s one-half of the community property until the surviving spouse’s death or remarriage.

5. **What Is A Succession?**

This is the process which transfers ownership of the property from the deceased person to those who inherit. A **succession** is the process of settling a deceased person’s estate and distributing the property to those who inherit after the debts are paid. This process is called probate in other states. The term “succession” may also be used to refer to the estate a person leaves behind at death.

6. **Does All Property Have To Go Through A Succession?**

Some types of property are not considered a part of your succession or probate estate. Assets that the law provides pass according to beneficiary designations do not usually have to go through a succession if there is a named beneficiary. Normally, retirement assets, like IRAs and 401(k)s, life insurance policies and annuities pass by beneficiary designation and do not have to go through the succession. It is important to make sure your beneficiary designations are up to date.

7. **Can Who Inherits Property be Changed with a Will?**

Yes. A will can specify who you want to inherit your property at your death regardless of whether you are married. Married couples commonly execute wills that provide the survivor will inherit their estate before anyone else. The right to leave your property to whom you want is subject to the right of your **forced heirs** to inherit a portion of your estate.

8. What Is A Forced Heir?

Currently, a forced heir is any child of the deceased who is under the age of 24 years or a child, regardless of age, who is permanently incapable of taking care of himself or herself at the time of the decedent's death because of mental incapacity or physical infirmity. Once a child reaches the age of 24, he or she is no longer a forced heir. You could have a child who is a forced heir until age 24, then no longer a forced heir after reaching 24, who then has a stroke that permanently disables him at age 40 which makes him a forced heir once again. A forced heir is entitled to a portion of your estate that the forced heir can claim even if you have left all of your property to someone else, including your spouse. Another common planning technique for married couples is to leave a lifetime usufruct to the surviving spouse over the forced heir's portion so that the surviving spouse can have the maximum use allowed by law.

9. Do I Need A Will?

Whether you need a will is something you should discuss with an attorney, but a will can do many things. The most important thing a will can do is change the people who inherit your estate in the absence of a will; for example, a friend, domestic partner, church or other charity. A will can detail what property should go to a particular person. As mentioned previously, in the absence of a will, your property will be distributed in accordance with the chart shown on page 5 of this booklet. A will can also do other things. For example, a will can: 1) name a guardian (called a tutor in Louisiana) for minor children; 2) create a trust for grandchildren, special needs heirs or spendthrift heirs; 3) make provisions to save estate taxes for larger estates; and, 4) name an executor to collect the assets of your estate, pay any bills due and distribute your estate to your heirs. If none of this is important, then you may not need a will. Regardless, you should discuss the details of your personal situation with an attorney.

Additional legal information is available at www.goea.la.gov/ website by clicking the "Legal Self Help" tab, and LouisianaLawHelp.org

Updated: April, 2020

Order of Inheritance in Louisiana Without A Will

Community Property	Separate Property
1. To children (or their descendants, if the children are deceased), with a usufruct to the surviving spouse. If no children, then	2. To children (or their descendants, if children are deceased). If no children, then
2. To the surviving spouse. If there is no surviving spouse, then	3. To brothers and sisters (or if any of them are deceased, their descendants) with a usufruct to the living parent(s). If no brothers or sisters (or their descendants) are alive, then
3. Estate is treated as separate property and passes as noted in "Separate Property" column.	4. To parents. If there are no parents, then
	5. To spouse. If there is no spouse, then
	6. To grandparents or other ascendants. If nobody exists in this group, then
	7. To nearest relative. If nobody exists in this group, then
	8. To State of Louisiana.