

Do I Need A Will In Louisiana?

Practice Areas

- Trusts

Absolutely! If you die without a Will or with an in-valid Will, Louisiana law determines who inherits your property. The Louisiana law was written before the invention of the automobile, the airplane and federal and state death taxes. It rarely meets your family and financial objectives. That is why having a Will is so important.

WHAT HAPPENS IF I DIE WITHOUT A WILL OR WITH AN INVALID WILL?

If you have a spouse and children, your children inherit your one-half interest in all community property acquired during your marriage and all of your separate property (such as property acquired prior to marriage or inherited property). Your spouse has the right to possess, use and receive income ("usufruct") from the community property inherited by your children. However, this usufruct terminates if the surviving spouse remarries. The usufruct does not apply to any separate property inherited by your children.

If you have a spouse and no children (or grandchildren), your spouse inherits your community property, but your separate property will be distributed to your brothers and sisters (or their descendants), with a usufruct in favor of your surviving parent(s), if any. At your spouse's death, any remaining community property will be distributed under the terms of your spouse's Will or solely to your spouse's side of the family if your spouse has no Will.

If you have no spouse but have children, your estate will be divided equally among your children, regardless of their in-dividual financial condition or ability. If you have no spouse or descendants, your estate will be divided equally by brothers and sisters, if any, surviving parents, or your other nearest relatives.

DOESN'T LOUISIANA LIMIT WHAT I CAN DO IN A WILL?

Yes. If you have "forced heirs," they can demand a portion ("forced portion") of your estate. A forced heir is any child under the age of 24 or a permanently disabled child, regardless of age. The forced portion is one-quarter (1/4) for one forced heir and one-half (1/2) for two or more forced heirs, divided equally by the number of forced heirs, but in no event will a forced heir's portion exceed the amount the forced heir would have inherited if you had no Will. For example, if you have five children but only one child is under age 24, the forced portion is not one-quarter (1/4) but only one-fifth (1/5) (what the child would have inherited if you died without a Will). Life insurance and retirement benefits generally are not counted in determining the amount of the forced portion, but if payable to a forced heir can be used to satisfy the forced portion.

If you die "rich" in comparison to your spouse, your spouse may under certain circumstances claim a marital portion of your estate. Please click the Marital Forced Share for more information.

WHAT ARE THE BENEFITS OF A WILL?

There are numerous benefits from a properly drafted Will.

Give some or all of the disposable portion of your estate to your spouse, grandchildren or other family members or friends.

Make special bequests of the family home, jewelry, collections or personal property to your spouse or children.

Protect your spouse with a usufruct for life over both separate and community property.

Establish trusts for children, grandchildren or other beneficiaries who need protection or experienced management of funds.

Provide for "special" children to insure their inheritance will not jeopardize their eligibility for governmental assistance programs.

Provide for contingency bequests in the case of a common disaster.

Provide for the disposition of the family business.

Make bequests to your church, a school or other charitable organizations.

Designate guardians for minor children.

Conserve your estate for your heirs by proper tax planning.

Designate the executor of your estate and whether you want an independent administrator.

WHAT TAXES ARE DUE AT MY DEATH?

Death taxes are due nine months after your death based upon the fair market value of your assets. Louisiana inheritance taxes have been repealed in entirety.

Large estates may be subject to federal estate taxes ranging from 41% - 49%. If you are married, a properly drafted Will can eliminate, reduce or defer all federal estate taxes until the survivor's death. Estates are entitled to a unified tax credit which equates to an exemption of \$2 million in 2008 (rising to \$3.5 million by 2009). If Wills are not properly drafted, the exemption may be wasted in the first estate. For example, assume you and your spouse have a combined \$4 million estate and no forced heirs. You leave everything to each other. Although there is no tax at the first death, there will be tax at the second death if the survivor's estate exceeds the applicable exemption amount. If you had left property sheltered by the exemption to your children, subject to the survivor's lifetime usufruct, the value of such bequest and future growth would not be included in the survivor's estate, even though the survivor had full use and control as lifetime usufructuary. If your Will provides that your surviving spouse's usufruct will not terminate on remarriage, your estate may elect to qualify the usufruct for the unlimited marital deduction.

MY ESTATE IS MODEST. DO I NEED A WILL?

Yes. Even if your estate consists only of your family home, some savings and perhaps some life insurance, a Will can be very important for family planning purposes. You can give your spouse complete control over the family home and other assets after your death. If you are married but have no children, a properly drafted Will can avoid shifting of assets solely to the survivor's side of the family at the survivor's subsequent death. Finally, there may be some special items you wish to leave to particular persons.

WHAT HAPPENS IF I DIE WITH A WILL?

Your Will is presented to the appropriate court in order to validate it as your Will. This process is known as "probate". The term "probate" also is used in the larger sense of "probating your estate". If your estate is not complex and requires no formal administration, the beneficiaries named in your Will are put into possession of their inheritance after payment of all death taxes. If your estate requires an administration, probating your estate means the process by which the person designated in your Will as your Executor handles your estate's affairs, including gathering and valuing your assets, paying your debts, taxes and expenses of administration and distributing your assets to those designated as beneficiaries in your Will. You can avoid delays, advertising costs and most court involvement if your executor is designated as an "independent" executor. Your Executor is required by law to conclude the administration of your succession as soon as possible.

Life insurance death benefits, retirement plan death benefits (including IRAs) and annuities payable to named beneficiaries (other than your estate) are not governed by the terms of your Will. These benefits are paid directly upon proof of death to those persons you have named on beneficiary designation forms. Therefore, it is important to coordinate these benefits with your overall planning.

CAN I PREPARE MY OWN WILL?

There is too much at stake to "do it yourself." Many books on the market suggest you can prepare your own Will or avoid probate. However, because of the peculiarities of Louisiana law, reliance on pre-printed forms

is risky. Most of the litigation involving estates is caused from problems arising from a "home-made" Will. You should consult with an experienced attorney familiar with Wills and trusts, your financial situation and your wishes. The lawyer will analyze your family and tax objectives, recommend alternatives and prepare a Will binding on your heirs which accomplishes your objectives. The cost of drafting a Will is one of the least expensive services an attorney can provide for you. It is well worth the investment.

HOW OFTEN SHOULD I REVIEW MY WILL AND PLANNING?

Financial and estate planning is a dynamic process. Many persons execute Wills and forget about them, despite changes in their financial assets, family and tax and Louisiana inheritance laws. Wills and beneficiary forms should be reviewed at least every five years or sooner if there is a significant change in your circumstances or preferences.

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