

Probate & Succession in Louisiana



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PROBATE & SUCCESSION QUESTIONS

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Here are some things you need to know:

1. What is Usufruct?

In order to understand Louisiana inheritance law you need to be familiar with the legal term **USUFRUCT**. The word is easier to understand if you think of two common English words, “use” and “fruits”. Often in our state, one person will inherit the right to use property while another will inherit the right to sell or mortgage property. A house is a perfect example. One person may have the right to live in the house. Another person may have the right to sell the house. This other right is referred to as “naked ownership.” While the naked owner can sell the house, it would have no effect on the usufruct. When the person who has the usufruct dies, the person who has the naked ownership automatically gets the usufruct, or in other words 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 would need to be consulted about specific issues.

2. What is a succession?

Succession is the process of settling a deceased person’s estate and distributing the property after debts are paid. This process is called probate in other states. Succession is also used to refer to the estate a person leaves behind at death.

3. What happens to property when someone dies without a will?

There are two things that are looked at first: 1) was the property community or separate; and, 2) what relationship are the survivors to the deceased?

4. What is separate property?

Separate property includes 1) property owned before marriage; 2) inherited property; or 3) property given to one of the spouses. In general, without a will, a spouse

inherits none of the other spouse's separate property. Instead it goes to the children or blood relatives of the deceased.

5. What is community property?

Community property is usually property accumulated by the couple while they were married (unless there was a marriage contract or inherited property). A spouse owns half of the community property and, if there is no will, will have usufruct of the deceased spouse's half until death or remarriage, whichever comes first. However, without a will, the surviving spouse would inherit the deceased's half only if the first deceased spouse died without any children, grandchildren or other descendants who would inherit first.

6. Can this be changed with a will?

Yes, most certainly. A will can specify that a spouse inherits before anyone else. If there are forced heirs, the forced heirs have to inherit a portion, but the will can provide that the rest goes to the spouse (or anyone else named in the will). The will can also give the spouse a lifetime usufruct over the forced heir's portion.

7. What is a forced heir?

At this point in time, a forced heir is any child of the deceased who is under the age of 24 years. Once a child reaches age 24, he or she is no longer a forced heir. A forced heir can also be a child, regardless of age, who is permanently disabled. So, you could have a child who is a forced heir until age 24, no longer a forced heir, and then has a stroke that permanently disables him at age 40 which makes him a forced heir once again.

8. Does all property have to go through probate?

Some types of property are not considered part of your succession in Louisiana. Normally, property that is paid directly to a named payee by a third party is not subject to succession laws. For example, any retirement asset, like an IRA or 401(k), would not have to go through succession and would not be subject to inheritance tax. It is important to make sure your beneficiary designation/s are up to date.

9. Do I need a will?

A will can do many things. The most important thing a will can do is change the people who would inherit in the absence of a will. A will can also do many other things, for example: 1) name a guardian/tutor for minor children; 2) create a trust for grandchildren, special needs or spendthrift heirs; 3) for larger estates, make provisions

to save estate taxes; and 4) remove any doubt as to what you want done with your property after your death. 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.

Order of Succession Inheritance in Louisiana If No Will

Community Property	Separate Property
1. To children or children’s descendants, with usufruct to spouse. If nobody exists in this group, then	1. To children or children’s descendants. If nobody exists in this group, then
2. To spouse, if there are no children or descendants of children. If nobody exists in this group, then	2. To brothers and sisters or their descendants with usufruct to parents, if parents are alive. If nobody exists in this group, then
3. Is treated as separate property if no one exists in 1. or 2.	3. To nieces and nephews, or their descendants, with usufruct to parents, if parents are alive. If nobody exists in this group, then
	4. To parents, if there are no brothers or sisters, nieces or nephews, or other descendants. If nobody exists in this group, 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.

For legal information, you can visit www.lawhelp.org/LA or call Tel-law, a free phone-bank of recorded messages at 800-483-5529 or (337) 262-5850 in Lafayette. For more information on community property, visit <http://www.lsba.org/PublicResources/BrochureDetails.asp?Brochure=2&Menu=PR> or

<http://www.ag.state.la.us/Article.aspx?articleID=24&catID=10>. To apply for legal assistance, call 504-355-0970 or 800-310-7029.

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