

What happens if you don't have a will?

The Louisiana laws of Intestacy will determine how your estate is distributed. These laws provide in part that if you are single and have no children, the ownership of your estate goes to your brothers and sisters, but your parents have a usufruct (usage) until their deaths. If you are single with children (never married, divorced, or widowed), your estate passes to your children outright.

What constitutes the estate of a married person? Half of the community property and all of your separate property make up your estate. Community property is that which you have acquired during marriage, and separate property is that which you owned prior to marriage, inherited or received as a donation.

If you have no will and are married with children, your spouse has a usufruct for life or until remarriage with your children being the actual owners. Your separate property goes directly to the children. Your spouse does not have a usufruct over your separate property.

If you do not have a will and are married without children, the law provides that community property passes to your spouse, but your separate property passes to your brothers and sisters with a usufruct for life in favor of your parents.

If you are married without children and no living parents, your community property passes to your spouse, but your separate property passes to your siblings outright.

As you can easily see, the protection for the surviving spouse is very limited. Also, children of any age become outright owners, even though your child may be a minor or legally incompetent or simply inept in managing his financial affairs.

Intestacy laws operate on an "everyone shares equally" basis. This is often not the ideal. Some parents give more to one child during their lifetime, because that child needs more, but at death the parents want to equalize what each child receives so that child can be given less having already received a portion of his inheritance. Often one child will take care of the remaining parent and the parent wants to give that child more at her death.

Please note, the laws of intestacy make no provisions for fiances, girlfriends, or boyfriends. The State of Louisiana does not recognize common law marriage. So you can live with someone unmarried for many, many years, and if you don't have a will at your death, they are entitled to absolutely none of your estate.

What can you do with a Will?

The heart of the question is "When you die, do you want to make life as easy as possible for the remaining loved ones?" Do you know anyone who wants to make life really hard for those left behind? Of course not, rational adults want to protect the people they love.

There is much you can do in a will to provide for and protect your spouse. If you do not have forced heirs, children under the age of 24 or a permanently disabled child of any age, you can give your estate to anyone you wish. You can give your spouse all or part of your estate as you see fit. It makes life so much easier for your spouse when he/she inherits everything and avoids the problems of dealing with the adult children when the first parent dies.

If you do have forced heirs, you can give the disposable portion of the estate in whole or part to a surviving spouse, family members, friends, or charities. You can also make specific bequests of cash, automobiles and other personal property to other persons and entities.

If you have forced heirs, you can give the surviving spouse a usufruct for life over the community and separate property (even as to a forced portion) and provide that the surviving spouse may sell, mortgage or otherwise encumbrance the non-consumables without the consent of the forced heirs.

You can provide for the surviving spouse to have the benefit of the income from an estate by trust with a shifting back of the principal (also known as corpus) to his or her family where there are no children or grandchildren.

Furthermore, you can establish special needs trusts for disabled children and adults, establish trusts for children or legatees who need the protection of the trust or experienced management, conserve estate assets through proper tax planning and designate a tutor or tutors for minor children. The hardest

question for those with minor children is who will raise the kids? Sometimes, it's who don't we want to raise the kids.

Additionally, you can specify how debts, administrative expenses and taxes are to be paid or allocated in your estate, name an executor/executrix and alternates to handle the succession and specify that a bond is not necessary. With a will, you may opt out of the "everyone shares equally" concept embodied in the laws of intestacy and you can direct an independent administration of your estate.

Furthermore, you can name an attorney to represent the estate (optional) and additionally designate other experts for the estate such as investment advisors, etc. and provide for alternative legatees where a legatee dies. You can also provide for a legatee's survivorship requirement of up to six (6) months and provide for children, grandchildren, nieces and nephews etc. through the use of a class trust.

There is much that can be done to protect your loved ones with a properly drafted will, as opposed to letting the state dictate the distribution of your estate.