

## WILLS ARE THEY REALLY NECESSARY IN LOUISIANA?

Let's first look at what happens to your assets if you don't have a will. If you have no Will or leave an invalid Will, the state intestacy law will control who inherits your probate assets. This law of intestacy provides that upon your death:

- If you are survived by children and spouse - Community property passes to the children subject to a usufruct for life or until remarriage in favor of the surviving spouse and the separate property passes to children.
- If you are survived by children only - All property passes to the children outright. If any of the children have predeceased the individual and are survived by children, then the portion that would have passed to the predeceased child passes to his or her children.
- If you are survived by spouse and brothers, sisters and/or parents and no children - Community property passes to the surviving spouse and the separate property passes to the surviving siblings subject to usufruct for life in favor of the parents. However, if no living parents, separate property passes outright to siblings.
- If you are survived by siblings only - All property passes to the siblings.

Please note that the disposition of real estate located in states other than the State of Louisiana are governed by the laws of the state where the property is located.

There are disadvantages of these Intestacy Laws. These disadvantages include:

- Protections for the security and welfare of the surviving spouse are very limited.
- Intestacy laws confer unrestricted ownership upon a child even though the child is a minor.
- Intestacy laws confer unrestricted ownership upon a child even though the child is legally incompetent or simply is inept in managing his financial affairs.
- Intestacy laws operate on an "everyone shares equally" basis.

### **What can you do with a Will?**

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

You can provide the surviving spouse with 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 encumber the non-consumables without the consent of 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 the deceased person's family where there are no children or grandchildren.

You can provide for a 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.

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

In conclusion, I hope that the above has shown you how much can be done to protect your loved ones in a properly drafted will, as opposed to letting the state dictate the distribution of your estate.

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