



## Louisiana Wills and Successions

The following is general information concerning your property and what happens to it upon your death.

### **Property is either separate or community.**

Separate Property: This is property that is inherited, “heir property.” It is also property that you had before you married, or property acquired with funds designated as separate from the community estate.

Community Property: This is property earned or acquired during the marriage. The property is classified at the time of acquisition and the manner in which it was acquired.

### **If you choose not to write a will, who inherits?**

**Descendants** (children or grandchildren) and your surviving spouse. The surviving spouse will have a legal **usufruct**, which is the use and enjoyment of your share of the community property inherited by the descendants. That use terminates at the death or upon the remarriage of the surviving spouse. If you die with no descendants or a surviving spouse, Louisiana law provides for others who are still living to inherit, in this order: your siblings, then your parents.

### **Can I write my own will?**

There are two forms of wills recognized in Louisiana, handwritten (called olographic wills) or notarial wills. Each has its own requirements to be valid and enforceable by the courts. An olographic will must be **entirely** written, dated, and signed in the handwriting of the person writing the will. The court will then try to enforce what you’ve written, provided it is legal to do so. You can be sure if what you are trying to do in your will is legal by talking with an attorney. A notarial will is one which is in writing and executed in front of a notary public, following certain rules for the language in the will and how it is signed.

### **With a will, who inherits?**

Louisiana still has **forced heirship**; that is, children under the age of 23 or children who are physically or mentally handicapped are considered “forced heirs.” If you have forced heirs, you are **required by law** to leave a portion of your estate to those forced heirs.

If you have no forced heirs, you may leave your possession to anyone you choose through your last will and testament. Your will controls the division of your estate.

You may be interested to know that Louisiana allows, through the giving of a usufruct in a will, the naked ownership of property to be given to one person while the use or enjoyment of that property can be given to another. It may be given to several persons in divided or undivided shares as well.

### **Can I keep someone from inheriting from me?**

Yes, you can leave someone out of your will or even disinherit someone who would be a forced heir, but there are limits on that freedom, so you should seek the advice of an attorney if you have the need to try to do this.

### **What is a privileged debt?**

The law requires that the following debts of the deceased be paid. If they are not paid, the creditors have a privilege or lien on the movables of the estate. The debts that are privileged on all movables in general are the following and are paid in the following order:

1. Funeral expenses
2. Legal expenses
3. Any expenses caused by the deceased person's last illness.

### **What about bank accounts and employers?**

With respect to bank accounts and employers, the following laws may apply. Please consult with your bank or attorney before making a withdrawal.

Any bank, credit union or other depository may pay to the surviving spouse of a depositor up to \$10,000 out of the deposits of the deceased without any court proceedings. The surviving spouse must give the paying bank an affidavit that the total funds withdrawn do not exceed the \$10,000 limit.

Any employer may pay to the surviving spouse of a deceased employee any wages, sick leave, annual leave or other benefits due the deceased employee up to \$6,000 as long as neither spouse has filed suit for divorce. If the deceased employee leaves no surviving spouse, or if either spouse has filed suit for divorce, the employer may pay the last wages and other benefits to any adult child of the deceased employee. These payments can be made without any court proceedings.

### **Will someone need to go to court after I die to get my belongings?**

The legal process of determining who are a person's legal heirs, if the person left a will, if that will is valid, and who is entitled to the ownership of their belongings is called a **succession**. There is a procedure for small successions which consists of filing some simple paperwork and avoiding any court proceedings. For larger estates, it is necessary to file additional documents, like a sworn list of the belongings the person's owned, a list of their children, etc. An attorney can advise you about what documents, if any, are needed to settle the estate.

### **Getting Legal Help**

If you feel you cannot afford an attorney, free legal assistance may be available by contacting: Acadiana Legal Service Corporation at (337) 237-4320 or by visiting [www.la-law.org](http://www.la-law.org) for more information or find out if you qualify.