

## Protecting Women and Children through Estate Planning

All too often there is the case of women and children absolutely devastated by the death of a spouse or parent and then further devastated by the results of not having thought through the future. That is why it is so very important to protect women and children through proper estate planning. By learning the basics of the Louisiana laws of intestacy – dying without a will – and the different ways of protecting women and children, light can be shed on a subject that most people are uneducated about. Although these legal principles are also applicable to men, women and children will be the focus.

The best way to make sure women and children are properly protected is for women to become educated and then to take action. Knowledge alone does not change lives, but applied knowledge does. So the protection becomes “real” for a woman and her children when the proper documents are in place.

What is your particular set of circumstances? How old are your children? Do you have a permanently disabled child of any age? Have you or your spouse been married more than once? Do you have a blended family? Do you have elderly parents?

Let's start with the first one. How old are your children? If you have a child under the age of 24 or one that is permanently disabled you have a “forced heir.” A forced heir is one that must inherit a portion of your estate. If you have a will, you have some control over that portion. If you do not have a will, your estate will be distributed according to Louisiana's laws of intestacy. The distinction between separate and community property is important to know. Community property is property acquired during a marriage. Separate property is property brought into the marriage, inherited property or property received as a settlement

(such as money from a personal injury case). Generally, if a prenuptial agreement is executed by a couple before marriage, the agreement will provide that property acquired prior to and during the marriage will be the separate property of each party. However, the standard agreement can be modified by the parties to provide that property acquired during the marriage will be community property.

By determining your classification from the following list you will know how your property will be distributed if you die without a will. Understand that “usufruct” means “use of something” but does not include ownership of that something.

### **Classifications of individuals at the time of death and how property will be passed to heirs**

- *Single without children:* Property passes to siblings with lifetime usufruct in favor of parents.
- *Single with children (or married but spouse deceased, with children):* All property passes to the children outright.
  - *Married with children:* Community property-spouse has usufruct for life or until remarriage but children are actual owners. Separate property-children inherit and spouse does not have usufruct.
- *Married without children:* Community property passes to spouse. Separate property passes to siblings with usufruct for life in favor of parents.
- *Married without children, no living parents:* Community property passes to spouse. Separate property passes to siblings outright.

It is very important for singles living together to understand that Louisiana does not recognize common-law marriages. People can live together 50 years yet have no inheritance rights under the laws of intestacy. Without a will, the woman is totally unprotected in this situation.

Please note that under Louisiana law the protections for the security and welfare for the surviving spouse are very limited. Notice there are no provisions for who will raise surviving children.

With that said, what can you do in a will? Here's the good news. If you have no forced heirs, that is no child under the age of 24 or permanently disabled of any age, you can leave your estate to whomever you want! Most married people in this situation leave everything to the spouse in full ownership, which totally protects the spouse from conflict among children and especially from children of prior marriages. It cannot be stressed enough what an important protection this is for women.

We have discussed the distribution of property. Now we need to talk about the children. With forced heirs, a spouse needs to be protected in order to have more control of the assets for a longer period of time. This can be done in a properly drafted will.

If you have minor children and if by some unfortunate turn of fate, you and your spouse are killed in a common disaster, who will raise the children? How will they be financially supported? Would you like to have your wishes known in this matter? No matter how good your relationships are with your family and in-laws, when you do not have a will designating the persons you want to raise your child, you are leaving that important decision to someone else. This seems to be the hardest decision for young couples to make. Often it's a process of elimination of whom don't

they want to raise the children.

Take the example of Brian and Tiffany who had three young children and were killed together in boating accident. They had agreed that Tiffany's oldest sister and her husband would do the best job raising their children if something ever happened to them. They also agreed that they did not want other relatives raising the children for a multitude of reasons. However, because there was no legal designation, a huge battle occurred between the relatives over who would get the children. The case eventually ended up in the court system and Brian and Tiffany's desires were not realized by the court's decision. It is extremely important for a young couple to make this decision about the raising of the children and have it formalized in a will.

There are many types of trusts and trusts aren't just for people with a lot of money. Most people who set up trusts are ordinary people who have made plans to leave something for their children. Parents of young children frequently set up trusts within their wills that go into effect at the death of the parent. This trust provides that the assets going to the children will be held in trust by a trustee and will be distributed to the children at a designated age.

If you have a permanently disabled child of any age who is now receiving or will receive governmental assistance monies such as SSI and Medicaid, you need to know that your child will lose these benefits if he inherits outright in his name. A special need trust shelters assets of a disabled person so they can qualify for or maintain their SSI and Medicaid benefits.

If you're frustrated with your teenager and are thinking of cutting him or her out of your will, the law says you cannot, as they are forced heirs who are entitled to a portion of your estate. Forced heirs are children 23 years of age or younger or children of

any age who are permanently disabled. Once a child turns 24, he is no longer a forced heir, unless he is disabled.

Many very sad cases have come to light in recent years involving women whose husbands have died and were previously married. It is easy for someone who was not the first wife to lose a house and other important assets because a will was not in place prior to the death of the current wife's husband.

Many women are shocked to learn they have no ownership in the house they've lived in for years with their second or third spouse. This frequently happens when one spouse moves into the other spouse's home after the marriage and the husband did not transfer partial ownership to the new wife nor did the husband have a will.

Often, women come out of a previous marriage with a poor credit rating and in order to purchase a house with a new spouse the house is purchased in the husband's name only in order to get a better interest rate on the loan. Usually, the wife is required to sign off at the act of sale and on the mortgage acknowledging the house is being purchased as separate property with separate funds. There is nothing wrong with doing this if a will is written giving that wife ownership of the house.

Sometimes these cases end very poorly for the wife and other times they end really well, depending on the relationship the wife has with the family. In a recent case, the wife was forced out of the husband's home by his brothers and sisters as he had no will and no children and the siblings inherited the property. Another case ended well when the children of the prior marriage donated the house to the second wife.

Women need to make sure their documents and those of their spouse or significant other are up-to-date with the law.

Louisiana inheritance laws changed significantly in the 1990s and most wills written during that time or before are outdated and cause unnecessary expense when being probated, not to mention anguish for surviving relatives. These old wills with usufruct language need to be changed.

In conclusion, keep in mind your particular circumstances, whether you are single or married, with forced heirs or no forced heirs or have had one marriage or multiple marriages. If you want to protect yourself and your children you should have a will that is compliant with current law and updated to your current life situation.

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The primary practice at Melchers Law Firm focuses on estates, wills, trusts, successions, business law and personal injury. (Plaintiff representation)