"Your Estate Matters"

By Ronda M. Gabb, NP, JD, RFC

Legal-ease

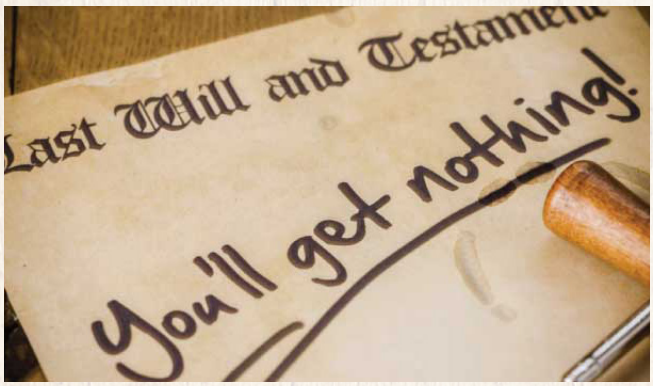
INTESTACY IS INCONTESTABLE!

When someone dies "intestate", it means that they have died without leaving a valid Last Will and Testament. If that happens, then the "intestacy" laws of the State of Louisiana will direct where your assets devolve. The "heirs" via intestacy will always be the people who are your closest relatives by blood, adoption, and only by marriage as the surviving spouse. The "heirs" will never be friends, partners, charities, or stepchildren. There can never be any specific bequests, such as a specific dollar amount or any other particular item (like a car or a home). There will never be an executor chosen.

While a Will may be challenged for many reasons, such as inadequate form, excluding forced heirs, undue influence, lack of competency of the testator (the person making the Will), etc…intestacy is incontestable! The intestacy laws of Louisiana are set in stone and while you may not like what they say…there really is nothing to contest.

If you don't like the intestate "Will" the State of Louisiana has already written for you, then you need to be sure you die with a valid Last Will and Testament in place. This can be as simple as handwriting your own "Olographic" Will. The Olographic Will must be entirely written in your own handwriting, any part that is not in your own handwriting is not read as a part of the Will. It must be obvious that it is meant to be your Last Will (and not mere instructions), and it must be dated and signed at the end (not necessarily on every page). There is no necessity for it to be witnessed and certainly not notarized. While a "Notarial" Will (one drafted by a Notary Public) is certainly preferable, an Olographic Will is still far better than intestacy if you do not like where the State of Louisiana says your assets will go!

A quick primer on intestacy: If you are married with children, your "community property" assets go to your children (or down the line to your grandchildren if any of your children have predeceased you leaving descendants), as "naked owners" with your spouse enjoying a "usufruct" (being able to use the property and the income from it), which ends at the earlier of



their death or remarriage. The spouse may not sell the real estate (or brokerage accounts) without the signatures of all the children/grandchildren (naked owners). If the assets are "separate property" (usually assets acquired before the marriage or inherited during the marriage) the spouse does not even enjoy a usufruct, the property devolves in full and complete ownership to your children (or possibly grandchildren). If you are married with no children, your spouse inherits the community property in full ownership. If you have no children, your separate property, regardless of marriage, goes to your siblings, or your nephews/nieces if your siblings have predeceased you (as naked owners), subject to a "lifetime usufruct" in favor of your parents.

And don't forget, "beneficiary-driven" assets (life insurances, IRAs, annuities) do not go through probate/succession, or even through your Last Will, as long as you have named a beneficiary (both Primary and Contingent) directly on these plans' beneficiary designation forms.

Like us on Facebook

See other articles and issues of interest!

Ronda M. Gabb
& Associates, LLC
A Louisiana Estate Planning & Elder Law Practice

Ronda M. Gabb is a Board Certified Estate Planning and Administration Specialist certified by the Louisiana Board of Legal Specialization. She is a member of the American Academy of Estate Planning Attorneys, National Academy of Elder Law Attorneys and the Governor's Elder Law Task Force. Ronda grew up in New Orleans East and first moved to Slidell in 1988, and now resides in Clipper Estates.