

"Your Estate Matters" Legal-ease

By Ronda M. Gabb, NP, JD, RFC



What's a **USUFRUCT?**

(No, it's NOT a cuss word!)

If you have lived in Louisiana long enough, you surely have heard of the word "usufruct". And when uttered, you do not need to wash one's mouth out with soap, it truly is a real legal word. And now we will learn how to pronounce it properly... it comes from two words of Latin origin 1) USUS, meaning the "use" and enjoyment of the asset, and 2) FRUCTUS, meaning the "fruits" (like rent, income, or interest) of the asset. When you put these two words together, USU-FRUCT...you have usufruct! (Please say it with a hard "R"!)

The most common usufruct occurs when someone dies intestate. "Intestate" simply means that the decedent died without leaving behind a valid Last Will and Testament. If Bill and Mary have been married for many years and all their assets were acquired during their marriage, they are classified as community property assets. If Bill dies intestate, all of Bill's community property assets will go equally to all of his children and Mary will enjoy a "usufruct" over all of those assets, regardless as to whether Mary was the mother of Bill's children or not. This usufruct will last for Mary's lifetime or until she remarries, whichever first occurs. Yes, this means that the intestate usufruct of a surviving spouse ends when they remarry. Bill's children will inherit the "naked ownership" (legally called the *abusus*) until Mary's usufruct terminates, at which point the children will then become the full and complete owners of those assets. One of my favorite legal sentences is this: "Naked

ownership will always ripen to become full ownership upon the termination of the usufruct." (Yes, I'm a proud nerd. Always have been.)

In more rare circumstances, we see an intestate usufruct come into existence when the decedent dies without children, and without community property, and leaves behind parents and siblings. In this case, the "naked ownership" of the decedent's separate property would divest to his siblings, per stirpes (in equal shares only if all were full-blooded siblings), subject to a lifetime usufruct shared equally in favor of the decedent's parents.

Notice that the usufructuary (the legal name of the person enjoying the usufruct) does not have the power to sell the assets subject to the usufruct. If the usufruct is over the family home (of which Mary still owns her community half) and Mary wishes to sell, she must obtain the permission of all of Bill's children (not just a majority), who are the naked owners. If Bill had no children, nor community property, and Bill's siblings were the "naked owners" then they would need the permission of Bill's parents, and sometimes that's NOT the parent of the naked owner...what if Bill had half-siblings!?

Just remember though, all of the above assumes Bill died without a valid Will. With a properly drafted Will, Bill could grant to Mary, as usufructuary, the power to sell the assets without needing the children's (naked owners) permission. This "power

to dispose of the non-consumables" (also referred to as a "super" usufruct) may apply to real estate, stocks, and any other type of asset. Bill could also guarantee that Mary's usufruct would last for her lifetime, regardless of remarriage, and state that Mary would not need to post any bond as the usufructuary.

In most cases, Bill wants Mary to have full use and control of his assets during her lifetime, yet when Mary dies, Bill wants his assets to go to his children (or maybe his siblings if he had no children or community property). If Mary has spent Bill's assets, then Mary's estate would owe the value of those assets back to Bill's naked owners (children or siblings) upon her death. This protects Bill's naked owners so that, upon the death of Mary, no matter what Mary's new Last Will may say (e.g. all to her new husband, or her own children, or to a charity), Bill's naked owners (children/siblings) will be "made whole" upon Mary's death.

Also note that having a usufruct over one's primary residence still qualifies for the Louisiana Homestead Exemption and the Senior Freeze. With proper planning, using the unique Louisiana concept of usufruct in estate planning can be very safe, convenient, and easy.

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